

# **DEMOCRACY, MARKETS AND THE COMMONS**

**Thesis**

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“We stand at the gates of an important epoch, a time of ferment, when spirit moves forward in a leap, transcends its previous shape and takes on a new one. All the mass of previous representations, concepts, and bonds linking our world together are dissolving and collapsing like a dream picture. A new phase of the spirit is preparing itself. Philosophy especially has to welcome its appearance and acknowledge it, while others, who oppose it impotently, cling to the past.”  
G. W. F. Hegel, in a lecture on September 18, 1806,  
quoted in Francis Fukuyama’s *End of History* (1992)

“There is enormous inertia – a tyranny of the status quo – in private and especially governmental arrangements. Only a crisis – actual or perceived – produces real change. When that crisis occurs, the actions that are taken depend on the ideas that are lying around. That, I believe, is our basic function: to develop alternatives to existing policies, to keep them alive and available until the politically impossible becomes politically inevitable.”  
Milton Friedman, Preface to  
*Capitalism and Freedom* (1982)

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## Introduction

Since the end of the Soviet Union in 1989, it has largely been assumed that liberal democracy or democratic capitalism provides people with the best social institutions possible. While capitalism ensures individual economic freedom, democracy provides people with political freedom. Private property coupled with markets and periodic elections ensure that people receive the most efficient economic and political systems that they could possibly want. Francis Fukuyama famously propagates this thesis in his book *The End of History and the Last Man* from 1992. Here, Fukuyama writes,

“The apparent number of choices that countries face in determining how they will organize themselves politically and economically has been diminishing over time. Of the different types of regimes that have emerged in the course of human history, from monarchies and aristocracies, to religious theocracies, to the fascist and communist dictatorships of this century, the only form of government that has survived intact to the end of the twentieth century has been liberal democracy” (Fukuyama 1992, 45).

Although Fukuyama admits that much can be improved in this system, he nevertheless believes that “we have trouble imagining a world that is radically better than our own, or a future that is not essentially democratic and capitalist” (ibid., 46). After the fall of the Berlin Wall, people’s ability to imagine a better and different world has supposedly come to an end. Thus, humanity has reached the end of history, at least regarding its political and economic institutions.

It might appear somewhat tedious to begin a book on democracy, markets and commons with a reference to Francis Fukuyama. Many people have already written about his bold thesis. Nevertheless, it must be acknowledged that Fukuyama’s book articulates a widely-held idea that has taken hold of Western society: That democracy and capitalism exist in a mutually supporting relationship. However, the assumption that open, competitive markets and the material wealth that results therefrom are preconditions for democracy is not new and has also been supported by more recent studies (Lipset 1960, 48-50, Boix and Stokes 2003, Boix 2011, Acemoglu and Robinson 2006, Bühlmann and Kriesi 2013, 31-33). A central pillar of this argument is the Hobbesian and Lockean postulation that individual private property secures the basic liberty that is necessary for a free and pluralistic society (Hobbes 1985, 234, Locke 2008, II, V, Epstein 2011a, b, Hayek 2013). As Jan Narveson succinctly puts it, “Liberty is Property” (1988, 66).

Generally speaking, the justification of individual private property is largely based on critique of common property with reference to two diverse yet interrelated arguments. Firstly, it is largely assumed that common property would normally not be cared for and overused. This age-old idea is already expressed by Aristotle who says that “what belongs in common to the greatest number, receives the least looking after” (Aristotle 2002, 24). A more recent interpretation of this notion is formulated by Garrett Hardin in his article *The Tragedy of the Commons* from 1968. Here, he concludes that “[f]reedom in a commons brings ruin to all” (Hardin 1968, 1244). As Hardin – and many others – believe, there are only two alternatives to this tragedy: State ownership or privatization or, in other words, socialism or capitalism. This leads us to a second critique of common property. Here, it is often argued that the historical examples of socialist regimes during the 20<sup>th</sup> century demonstrated that common property arrangements ultimately lead to an inefficient economic system, totalitarianism and oppression. A combination of these theoretical assumptions and historical experiences has thus led to a widespread consensus that individual private property or, more generally, democratic capitalism is the only game in town. Or, in the (in)famous words of Margaret Thatcher: “There is no alternative” (Berlinski 2008).

However, since the turn of the millennium, diverse political, economic and environmental crises have increasingly put this grand narrative of democratic capitalism into question. I am aware that the term “crisis” is problematic because it induces an alarmist and apocalyptic interpretation of reality. Apocalyptic narratives have probably existed since the beginning of human history and crisis theories have been prevalent ever since democracies and capitalist market economies were developed (Merkel 2014b, 11-12). Nevertheless, the existence or resurgence of these debates in diverse fields suggests that democratic capitalism is facing some fundamental challenges. Without going into the details, I would like to mention some central issues. Firstly, current political “crises” revolve around a decline in political participation since the 1980s in many Western countries (Whiteley 2012, Merkel 2014a, 118-120, Schäfer 2015), the internationalization of politics and democratic deficits in many supranational political institutions such as the EU, the IMF and the World Bank (Held 1991, 1995, Glenn 2010, Bellamy and Staiger 2013, Lavenex 2013, Habermas 2015) and, finally, the more recent resurgence of populism (Mudde 2004, 2014, Gherghina et al. 2013). Secondly, economic “crises” became most apparent in the global financial crisis of



2007/8 and has its roots, among other things, in the deregulation and denationalization of the economy (Streeck 1998, Stiglitz 2010) and in increasing socio-economic inequalities in many Western countries since the mid-1970s (Piketty 2014, Streeck 2014). Thirdly, environmental “crises” can generally be defined as the overstepping of planetary boundaries and are caused by the degradation of soil fertility, the loss of biodiversity and global warming (Rockström et al. 2009, Steffen et al. 2015). These changes have led scientists to argue that humans have, after approximately 11,700 years, left the geological epoch of the Holocene behind them and entered the new and increasingly unstable epoch of the Anthropocene (Steffen et al. 2011). As we see, contemporary democratic and capitalist societies are facing diverse and rather serious political, economic and ecological challenges.

What do these diverse political, economic and environmental “crises” have to do with each other – and with democratic capitalism? This is one central yet underlying question that I will attempt to answer in this book. For now, it is sufficient to declare that I do believe that these crises are interrelated and have a common core: An open and competitive economic system based on individual private property that enables and, importantly, requires perpetual and exponential economic growth – on a finite planet. I will demonstrate that these background social arrangements lead to the appropriation and unequal accumulation of resources from socio-ecological systems, which not only cause detrimental effects on the environment but also large socio-economic inequalities which, in turn, both hinder political participation and cause economic instability or “crises”. Furthermore, the prioritization of negative rights in individual private property and a belief in the self-regulation of competitive markets structurally limit people’s ability to democratically alter their social arrangements and thus to collectively solve the negative effects of these market arrangements. It is interesting to note that this situation is similar to – if not identical with – Garrett Hardin’s previously mentioned tragedy of the commons. However, it is not the commons that is the main cause of tragedy here, but rather privatization and the open and competitive market. Or, in other words, Hardin’s theory of the tragedy of the open and unregulated commons also turns out to be a story of the tragedy of the unregulated and supposedly self-regulating market.

As a reaction to the widespread acceptance of Hardin's theory, one answer to this tragedy of democratic capitalism that has increasingly been debated since the turn of the millennium is the notion of the commons. A main reason for this upsurge of interest in commons is the work of the political economist Elinor Ostrom who received the so-called Nobel Prize in Economics in 2009. Since the 1960s, Elinor Ostrom and her colleagues have extensively studied existing examples of sustainable self-governance common pool resources such as water systems, fisheries, forests and alpine meadows. A central point that can be drawn from her work is that her empirical research refuted the widespread belief that commons inherently lead to destruction. Instead, she was able to demonstrate that the management of common property by those who use the specific resources was an alternative form of democratic and ecological governance "beyond markets and states" (E. Ostrom 2010a). This, in turn, has led to an explosion of literature on commons that developed the concept in relation to diverse goods and resources such as information, open-source software, genetic code, seeds, food, land, housing, urban space, firms and credit (Shiva 2005, Hess and Ostrom 2007, Benkler 2006, Tortia 2011, Bollier et al. 2012, Bollier and Helfrich 2015). A main focus in this literature is often the contrast of commons to individual private property. As the renowned commons scholar Yochai Benkler states in his book *The Wealth of Networks*,

"'Commons' refers to a particular institutional form of structuring the rights to access, use, and control resources. It is the opposite of 'property' in the following sense: With property, law determines one particular person who has the authority to decide how the resource will be used" (Benkler 2006, 60).

Although Benkler is somewhat imprecise in his use of the term property, because commons can also be structured as property arrangements, the juxtaposition remains significant: While individual private property is based on exclusion and dominion, common property is structured according to the principles of (regulated) access and democratic (network) governance. The emphasis of commons theorists on inclusion and democratic regulation has, more generally, made commons a buzzword for an alternative and emerging form of social organization. Here, economic activities are based on needs-oriented and non-hierarchical "peer-production", which short-circuits the competitive market, the price mechanism and perpetual monetary growth (Rifkin 2015, Mason 2015). In this sense, it can be said that commons are providing people with concrete examples of how to create a more inclusive, democratic and ecologically sustainable society within or beyond democratic capitalism.

To assess this possible solution to the diverse challenges contemporary societies face, my dissertation will examine whether – and if so, how – the concept of commons can strengthen democratic practices and institutions by limiting or even overcoming negative socio-economic, political and ecological effects of capitalist markets. I will begin my paper with a discussion of democracy to lay an important stepping-stone for subsequent arguments. Here, I will reflect on the diverse and conflicting definitions of democracy and conclude that democracy fundamentally implies the rights and capabilities of people to co-determine their shared social conditions. In a second step, I will turn to the justifications of competitive and self-regulating markets and analyze their relations to the (democratic) state. I will demonstrate that a belief in the self-regulating market highly limits and undermines people's democratic capabilities to collectively solve social, economic and ecological problems. As an answer to this, I will turn to the concept of commons as a possible alternative to the market-state dichotomy that underlies democratic capitalism. I will begin this discussion with an analysis of Garrett Hardin's article "The Tragedy of the Commons" from 1968. After this preliminary discussion, I will examine the works of Elinor Ostrom and her husband, Vincent Ostrom. Here, it will be demonstrated that tragedy can be overcome through communication, reciprocity and trust, on the one hand, and democratically governed institutions of shared resource systems, on the other hand.

As will become clear, however, the Ostroms' work not only lacks a critique of privatization and markets but also a more fundamental, normative justification of commons in the name of ecological sustainability and human freedom. Due to this weakness, I will then develop an ecological understanding of commons that prioritizes the common reality of humans, the non-human world and their co-creation thereof. In turn, this will enable us to develop an ecological understanding of freedom that recognizes the rights of other human and non-human beings in the co-determination of their shared socio-ecological systems. I will thus argue that ecological freedom is based on the principles of care for others and on the civic tradition of democracy, which enables us to understand commons not simply as a resource, but rather as a practice of commoning in, with and through nature.

With this theoretical background, I then shift my focus and explore what a commons

theory of property might look like. To do this, I contrast such an exemplary theory with John Locke's classical labor theory of property and John Rawls' more recent theory of a property-owning democracy. In my critique of Locke's labor theory of property, we will discover that the pillars of a commons theory of property are guardianship, non-domination and needs satisfaction. In the following re-interpretation of John Rawls' property-owning democracy, I argue that a more ecologically sound theory of (pre)distribution should not focus on productive monetary assets, but rather on the access to material resources and their sustainable maintenance. In a final step, I emphasize that a commons theory of property must also include access to collective consumption goods, thereby increasing the freedom of individuals and the number of convivial social arrangements, while simultaneously decreasing humans' detrimental ecological impact. Ultimately, I hope to demonstrate that commons property arrangements enable the creation of a relative abundance on a planet with limited resources.

After this development of a commons theory of property, I examine the relations between commons and the state and then between commons and the market. In both cases, I argue that a commons-based or commons-creating society requires a significant democratization of both the state and the market. With reference to the Ostroms' notion of co-production, I maintain that a commons-creating society would not only imply that access to vital goods and resources should be provided by the state, but, more importantly, that state provision of public goods is transformed into a state support of commons and commoning. I illustrate this through the examples of housing, healthcare and education. Finally, in my analysis of the market-commons relationship, I contend that we should not simply condemn the market, but that we should, rather, transform the open and competitive market into what I call a market commons. While the former is supposedly self-regulating, the latter is democratically governed and regulated by those largely affected by it. I explore this notion of the market commons with reference to the concepts and examples of associative and corporatist democracy, the social and solidarity economy and, finally, community-supported modes of production. In all these examples, antagonistic and thereby competitive relationships between isolated agents are mitigated through institutional arrangements of democratic negotiation and cooperation. Ultimately, I will argue that this democratic form of governance that lies at the heart of commons has the potential to solve the diverse and interrelated political,

economic and ecological problems that we face today. That being said, it becomes clear that commons provide us with normatively robust and, simultaneously, practical alternatives to the tragedies of democratic capitalism. Yet as I will show, this alternative does not exist beyond markets and states, but lies, instead, in the democratic and ecological transformation of these institutions through commons and commoning.

# 1. The Concept of Democracy

I begin my analysis of the relationship of democracy, markets and commons with an analysis of the concept of democracy, because it can generally be said that during the 20<sup>th</sup> century democracy has become, as Hans-Peter Kriesi affirms, the “only legitimate [political; LP] game in town” (Kriesi 2013, 1). Despite this broad agreement, it often remains rather unclear what democracy actually means. For this reason, I will firstly discuss the contested nature of the concept of democracy. In a second step I will critically reflect diverse models of democracy, with a main focus on the work of the political scientist Wolfgang Merkel. In a third step, I will argue that we must unearth a more foundational meaning of democracy that lies at the heart of all of these different models. Here, I will conclude that democracy inherently entails that people have the rights and capabilities to co-determine their shared social conditions. This definition of democracy will ultimately lay the normative foundation for my subsequent development and defense of the commons.

## 1.1. Democracy as a Contested Concept

As is common knowledge, the word “democracy” etymologically means the rule (*kratos*) of the people (*demos*) (Held 1987, 2). What this means precisely, however, is quite unclear and often highly contested. With Michael Saward (2003), we could even say that democracies exist wherever there is a debate over the definition and interpretation of democracy (Cheneval 2015, 18). Or, in more general terms, it can be agreed upon that there is no agreement on the definition of democracy.

Despite this general disagreement, most democratic theorists assume that democracy provides a method of legitimizing political authority or rule and that there exist different models of democracy. Let us therefore begin with the legitimate use of political power. Although he was no democrat, since Thomas Hobbes, it has generally been assumed that the use of political authority and a monopoly on the use of coercive force in society should be legitimized through the consent of the people – be that with an actual or hypothetical social contract or periodic elections and votes in a ballot box (Held 1991, 203). Democratic or, in the words of Rawls, liberal legitimacy makes it possible for social

order to be created through the understanding and acceptance of and therefore the identification with the rules and institutions governing society (Rawls 2005, 137).<sup>1</sup> This form of legitimacy differs, for example, from a theocratic or customary legitimation of political and legal power in which the right to use coercive force is either justified on the basis of a specific religious order of society (transcendental beliefs) or hereditary rights. In both cases, however, the people in power are not necessarily accountable for their actions and their responsibility towards others because their positions and rights – at least theoretically – cannot be questioned, challenged or altered. In contrast, democratic legitimacy not only requires consent, but also provides people and citizens with the possibility to criticize and alter the rules and regulations of one's society either through public debate or simply through the ballot box. Ideally, the withdrawal of support from a political authority increases the responsiveness and accountability of those in power to the demands of the people (Bühlmann and Kriesi 2013).

There are different implicit factors in this notion of legitimacy that lead us, in turn, to a better understanding of democracy. These are most clearly formulated in Robert Dahl's classic statement in which he broadly defines five criteria for a democratic process. These include effective participation, voting equality, enlightened understanding, exercising final control over the agenda and the inclusion of all adults (Dahl 1998, 37-8). Similarly, Francis Cheneval defines the essence of the adjective "democratic" as "members recognized with equal status that are included in collective decision-making processes" (Cheneval 2015, 19; transl. LP). While these definitions are very broad, I would agree with Bühlmann and Kriesi that "[u]nder contemporary conditions, democracy essentially means representative government" (Bühlmann and Kriesi 2013, 46). Although representative democracy appears to be the most widespread, it can take on different shapes, including "liberal democracy, protective democracy, competitive elitism, pluralism, or legal democracy" (ibid.: 45). Despite these differences, a common feature of representative models of democracy – in comparison, for example, to more participatory models – is that there is a clear separation between governors and the governed. Furthermore, the democratic process and the legitimacy that results therefrom are confined to the public sphere and the state's use of coercion. While this

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<sup>1</sup> According to Rawls, "[O]ur exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. This is the liberal principle of legitimacy" (Rawls 2005, 137).

may be the most widespread understanding, to assume that it is the best form of democracy would be a naturalistic fallacy. In contrast to this assumption, I will argue that democracy and democratic legitimacy cannot be confined to elections of representatives in government but that they must deal with the question of power more generally and be extended to the sphere of economics in specific. To make a case for this, I will turn to incremental models of democracy as described by Wolfgang Merkel with reference to those especially developed by C.B. Macpherson and David Held.

## **1.2. Models of Democracy**

In discussing the question whether contemporary democracy is in a crisis, Wolfgang Merkel distinguishes between minimalist, medium-range and maximalist models of democracy. Merkel associates the minimalist model with Joseph Schumpeter's competitive and elitist model of democracy. Here, "free, equal, and secret ballots are not only the core of democracy, but democracy itself" (Merkel 2014b, 12). Other names for this type of democracy are, for example, Max Weber's "plebiscitary leadership democracy" (Held 1987, 158) or the "pluralist elitist equilibrium model" (Macpherson 1977, 77). Competitive elitist democracy emphasizes the existence of social inequality in the form of a ruling elite as political producers vis-à-vis the less well-off and less educated masses as political consumers. The model presupposes a pyramidal and bureaucratic structure of society and is based on what Vincent Ostrom calls "machine politics and boss rule" (V. Ostrom 1997, 19). Political power is located at the center and top of society and is made responsive and vertically accountable through competitive elections. Due to the danger of such centralized power, this competitive elitist model of democracy is often coupled with protective and legal models of democracy (Held 1987, 37-71, 243-254, Macpherson 1977, 23-43). To further limit the power of the state and the representatives in office, the minimalist concept of democracy also requires a clear separation of the public from the private and of political from economic spheres. This separation supposedly provides people with a realm of private economic freedom that protects them from state coercion. This is what is normally understood as negative freedom: The freedom from arbitrary interference by the state or public (Berlin 2008, 169-78). In turn, this freedom also disciplines the state through the power of private individuals, which is mostly based on their "countervailing power of private capital" (Held 1987, 160). We will return to this model of democracy when discussing the



justification of open and competitive markets later. According to Wolfgang Merkel, this minimalist model does not provide us with the information to discern whether a democracy exists or is in crisis because we cannot know whether the elected representatives are governing on behalf of the people or “on behalf of large corporations, banks, lobbies, and supranational regimes” (Merkel 2014, 13).

In comparison to this minimalist model, Merkel argues that a medium-range democracy goes beyond periodic elections and vertical accountability. Here, he argues that a medium-range democracy must be “embedded in guaranteed human and civil rights and in checks and balances” (Merkel 2014, 13). Although Wolfgang Merkel only discusses the rule of law as a central element of democracy in the mid-range model, I would argue that Merkel does not differentiate between specific types of the rule of law. In a minimalist model, the rule of law is limited to the protection of private property, the enforcement of contracts and the guarantee of periodic elections. In the medium-range model, the rule of law is extended to other civil rights which include, most importantly, the right to participation in political decision-making processes (Merkel 2015, 12). This comes close to Cheneval’s second definition of the adjective “democratic”, which “means a decision-making procedure of a political community or people, in which all citizens have the right to participate in the organization of collective action and to control the use of political authority/power” (Cheneval 2015, 19; transl. LP). The focus lies here on the input-dimension of democracy and background institutions that provide just procedures. The specific output of democracies is not included in this definition, but, rather, depends on the outcomes of deliberation processes. Input and output, form and substance are torn apart. The emphasis on political procedures and participation implies that a middle-range democracy includes certain forms of developmental democracy such as the one propagated by John Stuart Mill, in that it enables people to develop their intellect and moral capabilities through this participation (Macpherson 1977, 44-76). This can, in turn, be understood as a formal understanding of positive freedom, or the freedom to reflexively develop one’s self in deliberative interaction with others (Honneth 2014, 29-41). Furthermore, Merkel (2015, 12) argues that this model of democracy also theoretically includes more demanding forms of participatory democracy as propagated by Benjamin Barber (1984) and Archon Fung and Erik Olin Wright (2003). It appears, therefore, that Merkel’s notion of medium-range democracy is very broad and includes a

wide variety of specific democratic concepts ranging from representative to more participatory forms of democracies.

In contrast to this procedural understanding of democracy in the medium-range model, Merkel argues that the maximalist model of democracy emphasizes the output dimension. According to Merkel, this

“include[s] public goods, such as internal and external security, economic welfare, welfare state guarantees, fairness in the distribution of basic goods, income, social security, and life chances. In particular, they emphasize the need to avoid extreme inequalities in the distribution of income, and view the provision of primary and social goods at the core of democracy” (Merkel 2014, 13).

This, in turn, comes close to Cheneval’s third concept of the adjective “democracy”, which “generally means the normative ideas of a form of living that is egalitarian, inclusive, deliberative, transparent, free from oppression and exploitation, fair, etc.” (Cheneval 2015, 19). The inclusion of the output dimension into the definition of democracy implies an extension of the rule of law to include social and economic rights such as the right to education, housing, health, a minimum wage or the means of production. This maximalist model attempts to deal with the problem of a purely procedural concept of democracy in which the door to participation might be wide open, but if people lack the resources and capabilities to enter the realms of politics, participation becomes an empty promise. The model attempts to give substance to form – and transforms formal freedom into a more substantive, positive freedom. However, Merkel is critical of the maximalist model because it does not necessarily require democratic procedures and can easily be realized in more authoritarian regimes (Merkel 2015, 13). Furthermore, Merkel rejects the maximalist model because normative standards are supposedly so high that “only a few democracies can pass their ‘social-democratic test’” (Merkel 2014, 14). And because the minimalist model is so meager, Merkel argues that it is necessary to adopt a medium-range definition of democracy that enables people to measure the grades of a democracy without automatically assuming that all democracies are either in perfectly good health or permanently in crisis (Merkel 2015, 14).

### **1.3. Surplus and Foundational Meanings of Democracy**

Wolfgang Merkel's three-tier model of democracy is sufficient if one wants to measure existing democracies. Yet, because the model's focus is on measuring the qualities of existing democracies, especially with reference to their procedural institutions, it obviously lacks the ability to grasp the full potentiality of democracies. This would be like attempting to measure a child's future height and weight when it will be an adult. Nevertheless, this is not to say that a democracy must forever remain in the specific form that it currently exists in. Just because a certain form of democracy is more widespread or easier to measure does and should not imply that this specific model of democracy must be maintained. This would be a naturalistic fallacy in democratic theory. In this sense, I would agree with Ernesto Laclau and Chantal Mouffe that all terms and identities are "polysemic" and therefore "overdetermined" (Laclau and Mouffe 2001, 121). This implies that they bear a "surplus of meaning" that disrupts, breaks up and goes beyond the present dominant and hegemonic understanding of a word (ibid., 97-114). In the words of Laclau and Mouffe:

"The practice of articulation, therefore, consists in the construction of nodal points which partially fix meaning; and the partial character of this fixation proceeds from the openness of the social, a result, in its turn, of the constant overflowing of every discourse by the infinitude of the field of discursivity" (ibid., 113).

While this potentiality cannot be easily measured, this does not imply, in turn, that it does not exist. On the contrary, it implies that meanings – and realities – change over time, for better or worse. In relation to democracy, this is easily shown by the expansion of the enfranchised population from only male adults who own property to all male adults, to women and to people who were previously considered to be slaves. However, the understanding of democratic inclusion must not stop there but could, in the future, also include immigrants, teenagers and children or, as I will later argue, even non-human beings. The same can be said about the understanding of democratic equality which is for some the central aspect of democracy (Christiano 2010, 199, Christiano 2008). There exist, however, different interpretations of democratic equality. We can, for example, understand equality as the equal protection of property rights for the existing distribution of resources and the equal right of citizens to elect a representative every four years (minimalist model). Another notion of equality implies the equal right

to participate in politics more actively (medium-range model). Yet another denotes the rough equality of material resources to enable people to lead a self-determined life in concert with others. Merkel, for example, accepts the shift in the rule of law from minimal property rights to other basic civil rights that aim to secure political participation but, in turn, rejects the further shift to equal socio-economic rights. Furthermore, the question of why democracy is limited to the public sphere is completely ignored. Put in such a historical context, Merkel's normative demarcation appears contingent and arbitrary and suppresses a more fundamental, normative understanding of democracy. To be fair, we must distinguish here between political science that aims to measure reality and political theory that opens up possibilities of how this reality can or should be transformed. While Merkel is of the former camp, I would position my argument, which I will develop here, in the latter group.

That being said, I would like to push this argument for a more demanding understanding of democracy a little bit further. In the description of models of democracy in this paper so far, there appears to be an implicit normative linearity from bad to good to best. One could argue that this linearity corresponds with the chronological linearity of the development of democracy from a minimal model in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries to a medium-range, proceduralist model since the Second World War and possibly to more substantive forms of democracy in the future. Here, substantial participation is nice to have, yet not a necessary and inherent aspect of democracy. Contrary to this account, I would argue with numerous others such as Chantal Mouffe, Axel Honneth and Charles Taylor that both minimal and proceduralist accounts of democracy are already expressions of substantive values. As Mouffe explains with reference to Wittgenstein:

"Rules [of law; LP], for Wittgenstein, are always abridgements of practices, they are inseparable from specific forms of life. The distinction between procedural and substantial cannot therefore be as clear as most liberal theorists would have it. In the case of justice, for instance, it means that one cannot oppose, as so many liberals do, procedural and substantial justice without recognizing that procedural justice already presupposes acceptance of certain values. It is the *liberal* conception of justice which posits the priority of the right over the good, but this is already the expression of a specific good" (Mouffe 2000, 68).

As we can see, this procedure-substance dichotomy is based on the “liberal” distinction between the right (form/procedure) and the good (substance). Mouffe argues, however, that the specific definition of the right is also always an expression of a specific good. In other words, while procedural democracy emphasizes an individual or particularistic concept of the good, the realization of such individual rights is based on more fundamental social freedom. Along these lines, in his book *Freedom's Right* (2014), Axel Honneth defines the concept of social freedom in contrast to negative and reflexive positive freedom:

“While the idea of negative freedom [...] must fail because the ‘content’ of action cannot itself be grasped as ‘free’, the idea of reflexive freedom is insufficient because it opposes the actions it views as free in substance, viz. as self-determined acts, to an objective reality that must continue to be regarded as completely heteronymous. [...] Not only must individual intentions be developed without any external influence, but the external, social reality must be able to be conceived as being free of all heteronomy and compulsion. The idea of social freedom, therefore, is to be understood as the outcome of a theoretical endeavor that expands the criteria underlying the notion of reflexive [positive; LP] freedom to include the sphere that is traditionally set in opposition to the subject as external reality. [...] The idea is rooted in a conception of social institutions in which subjects can grasp each other as the other of their own selves [...] Because the individual’s striving for freedom can thus be fulfilled only within – or with the aid of – institutions, the ‘intersubjective’ concept of freedom expands once again into a ‘social’ concept of freedom. A subject is only ‘free’ if it encounters another subject, within the framework of institutional practices, to whom it is joined in a relationship of mutual recognition; only then can it regard the aims of the other as the condition for the realization of its own aims” (Honneth 2014, 43-4).

Or in somewhat simpler terms: “We must first regard all subjects as integrated in social structures that ensure their freedom, before they then participate as free beings in a procedure that monitors the legitimacy of the social order” (Honneth 2014, 57). This implies that form and content, procedure and substance, other and self, and an objective social order and subjective freedom always exist in circular, dialectical and interdependent relationships that advance each other. In the debate between liberalism and communitarianism, this implies that social, democratic freedom and the definition of a common good are inherent ontological preconditions for individual freedom (Taylor 2003). Or in other terms, democratic rights can only be realized through substantial participation in (countervailing) collective action, irrespective of their specific type. Translated back into the debate on democracy, this implies that the supposed

“maximalist” model of democracy in fact underlies both minimalist and medium-range models.

This normative reversal of the sequence of democratic models opens our insight, firstly, to the fact that procedure and substance in democratic models cannot be so clearly separated and that means and ends are reciprocally determined (Dorf and Sabel 1998, 284). Second, it has become clear that democratic freedom should be inherently understood as deeper and broader than minimalist and medium-range models. But what does this mean for our definition of democracy? It suggests that although democracy is often understood either as a representative democracy or the more active participation in political decision-making procedures, the word democracy simultaneously bears a normative surplus, which invariably points to transformations and – in an optimistic interpretation – improvements of social arrangements. On the one hand and, in Rawls’ words, this refers to the realization of a more just or democratic basic social structure that realizes a “fair value of political liberty” (Rawls 1999, 226). On the other hand, this dynamic and social reading of democracy also demonstrates that democracy has an inherent tendency to overflow from political spheres into other spheres of social life, be that the family, church, media or the economy. However, this does not imply that democracy originates in the political sphere. Instead, I would agree with John Dewey’s well-known saying that a “democracy is more than a form of government; it is primarily a mode of associated living, of conjoint communicated experience” (Dewey 2008, 93). Nevertheless, I would, go further than this vague notion and specify with Joshua Cohen and Joel Rogers that a democratic way of living implies “the idea that free and equal persons should together control the conditions of their own association” (Cohen and Rogers 1983, 18). In this definition it remains unclear, however, how the specific relation between the individual and democratic freedom is to be understood. To comprehend this relationship, it is helpful to turn to David Held’s “principle of autonomy”, which takes the relationship between individual and democratic freedom into account:

“[I]ndividuals should be free and equal in the determination of the conditions of their own lives; that is, they should enjoy equal rights (and, accordingly, equal obligations) in the specification of the framework which generates and limits the opportunities available to them, so long as they do not deploy this framework to negate the rights of others” (Held 1987, 271).

Although this concept of autonomy is framed as individual, it is essentially social and democratic in that it enables people to participate in the co-determination of one's institutions. Important aspects of this principle for Held are the "key conditions for the realization of the principle of autonomy" (Held 1987, 275), which include, for example, the limitation of private property, access to resources and necessary changes in the organization of household or care activities. Here, our concepts of democracy and politics are broadened to deal with the distribution of resources and questions of power more generally:

"[Democratic politics; LP] is about the capacity of social agents, agencies and institutions to maintain or transform their environment, social or physical. It is about the resources that underpin this capacity and about the forces that shape and influence its exercise. Accordingly, politics is a phenomenon found in and between all groups, institutions (formal and informal) and societies, cutting across public and private life. It is expressed in all the activities of cooperation, negotiation and struggle over the use and distribution of resources. It is involved in all the relations, institutions and structures which are implicated in the activities of production and reproduction in the life of societies. Politics creates and conditions all aspects of our lives and it is at the core of the development of problems in society and the collective modes of their resolution" (Held 1987, 275-7).

For this reason and according to Held, politics are considered "a universal dimension of human life" (ibid., 277), which should be subject to democratic legitimacy based on the principle of autonomy and democratic decision-making procedures. It can be said here with Laclau and Mouffe that politics become more "political" in that they are now understood as "a practice of creation, reproduction and transformation of social relations [that; LP] cannot be located at a determinate level of the social" (Laclau and Mouffe 2001, 153). Democracy thus becomes more "political" as it is understood to be the ability to alter and determine the diverse arrangements that structure society. Furthermore, democracy is understood as a means to deal with the distribution of resources, power and the problems that result therefrom. It is this broad yet fundamental concept of democracy that I will further develop in relation to the ecologically grounded concept of commons.

For the moment, however, let us turn to an analysis of the relationship between the market and the state in order to see to what extent this concept of democracy is compatible with the open and competitive market.



## **2. State Monopoly and the Competitive Market**

Besides democracy, the other main social institution that has gained widespread acceptance is that of the capitalist or open and competitive market. In this section, I will therefore analyze the justifications of the open and competitive market and its relation to both the state and to democracy. I will begin this analysis with a short discussion of Thomas Hobbes' influential work on the state-market relation. In a second step, I will argue with reference to Montesquieu and, most importantly, Adam Smith that two central justifications of the competitive market are its creation of a peaceful social order and the unlimited generation or, rather, accumulation of monetary wealth. Thirdly, I will demonstrate with reference to diverse and more contemporary economists that a central feature of the competitive market is that it operates in a self-regulating manner, which requires both limited state interference and an open institutional structure. In a final step, I will argue with reference to Friedrich August von Hayek that the strict implementation of an open and competitive market severely undermines democracy and can potentially lead to a type of authoritarian liberalism.

Before beginning with this discussion, I would, however, like to shortly explain why I do not speak of capitalism here, but instead use the term market or, more precisely, open and competitive markets. The reason for this is not only because capitalism is often used in a critical or pejorative manner, but also because it describes a more encompassing historical socio-economic transformation of society (Kocka 2014, 6). In contrast, the terms "market" or "market economy" is not only less polemical, but also refers to the more idealized and, thus, somewhat ahistorical model of the market. It is this idealized institutional arrangement of the open and competitive market that I would like to focus on here. As I will later demonstrate in my discussion of the market commons, openness and competition are, however, not characteristic of all markets, but merely specific institutional arrangements of capitalist markets. And within the existing "varieties of capitalism" (Hall and Soskice 2004), they refer to the ideal model of liberal market economies. But for now, let us turn to the origin, justification and implications of the open and competitive markets in the history of political thought.

## 2.1. Hobbes: Anarchy, Leviathan and the Competitive Market

In the history of ideas, it can generally be said that the concept of the competitive market arose with Thomas Hobbes (1588-1679) and his individualistic portrayal of humans in antagonistic relationships (Hobbes 1985[1651]).<sup>2</sup> In Hobbes' book *Leviathan*, an absolute sovereign should overcome the anarchic state of nature, then enabling people to pursue their self-interest in a less destructive manner. By possessing the monopoly on the use of coercion, this Leviathan can secure individual property rights and enforce contracts. Similarly to the minimalist notion of democracy, here freedom is understood negatively as non-interference that provides people with the legal framework and security to trade and accumulate goods freely in a competitive market. According to Hobbes, the monopoly of the state shall overcome an anarchic state of nature by creating a competitive market economy.

Because it is important to understand Hobbes' theory in its historical context, I would argue with C.B. Macpherson (Macpherson 2011) that Hobbes' *Leviathan* was not primarily an answer to an imagined anarchic state of nature, but more concretely to the development of a merchant class with "market-made wealth" that then led to the English Civil War of 1642 that went on until 1651 (ibid., 65). Here, "war was an attempt to destroy the old constitution and replace it with one more favorable to the new market interests" (ibid.). This social disorder that Hobbes experienced was then projected onto a theoretical state of nature. In turn, Hobbes' concept of the Leviathan was not utilized to legitimate and secure a minimal, parliamentary democracy, but to legitimate the rule of an absolute sovereign. It could be argued that with Hobbes' contractual theory of the state, absolute authority was secularized and shifted from the Church to a socially legitimated state monopoly. Nevertheless, both the Leviathan and laws were understood as virtuous and absolute and the people constituting the social order as corrupt. Social order was therefore conceived as a dichotomy of coercion and repression from above and adherence by the people below. Here, the sovereign is to be understood as the watchmaker of an "automated machine" (ibid., 31) of a competitive market society that is held together by the overarching monopoly of the state.

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For a discussion of this individualistic and antagonistic portrayal of social reality, see for example, C.B. Macpherson's introduction to Hobbes' *Leviathan* (Macpherson 1985, 48-53).

## 2.2. Justifying the Market: Social Order, Protection from Arbitrary Powers and Unlimited Wealth

The rise of bourgeois society and Hobbes' new understanding of a competitive market economy was utilized soon enough not only for the legitimization of a Leviathan, but also for the creation of a more peaceful and prosperous social order. As Albert O. Hirschman convincingly explains in his book *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph* (Hirschman 1997), the pursuit of economic self-interests was not only intended to overcome the capricious and belligerent passions of feudal lords, but also to limit the monopoly of power of absolute monarchs. Hirschman demonstrates that this assumption is most clearly declared by Montesquieu in his *Esprit des lois* (1748), who assumes that "commerce [...] polishes and softens barbarian ways" (Montesquieu quoted in Hirschman 1997, 60). Put somewhat simply, steadfast economic interests in trade and commerce should tame wild and capricious passions. Or, conversely, irrational passions should be channeled into rational economic interests as in a process of sublimation. For these reasons, commerce can not only tame feudal lords, but it can also pacify entire peoples and nations. Furthermore, in enabling people to pursue their economic interests and move their capital about freely, Montesquieu saw an economic means to check the abuse of unlimited political power (ibid.: 77-8).<sup>3</sup> This is what was previously implied by the "countervailing power of private capital" (Held 1987, 160). Simply put, market competition should not only overcome the anarchy of warring feudal lords, but it should also limit the monopoly of power of absolute sovereigns.

We find another twist to this general legitimation of competitive markets in the works of two other writers of the same time period, Bernard Mandeville (1670-1733) and, more importantly, Adam Smith (1723-1790). It could be said that Mandeville made the point most bluntly in his postulate that through competition and commerce, "private vices" will transform into "publick benefits" (Mandeville 1924). Although Adam Smith was no cynic like Mandeville, this conviction appears very similar to Adam Smith's well-known metaphor of the "invisible hand" in *The Wealth of Nations* from 1776 in which self-interest leads to social order and an increase in society's material wealth (Smith 1994,

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<sup>3</sup> It should be differentiated here that while Montesquieu was concerned with limiting the unlimited power of the king, Adam Smith was more concerned with the pacification and limitation of the power of feudal lords (Hirschman 1997, 102).

485).<sup>4</sup> The importance of this paradigmatic shift in moral and political philosophy cannot be underestimated. In line with other “modern” thinkers such as Hobbes and Machiavelli and, possibly, for the first time in human history, social order and well-being should not be created by combatting vice with virtue, but instead through the collision of vice or self-interest with the self-interest of others. As with Hobbes, in the social arrangements of Mandeville and Adam Smith individuals are conceptualized as separate and self-interested entities that find themselves in antagonistic and competitive relationships with each other. Similar to Montesquieu, Adam Smith emphasizes his somewhat surprising and paradoxical conclusion that by unleashing self-interest and competition, a more orderly and thus more orderly society should arise. Adam Smith explains this in relation to corporations and the monopoly of coercive force:

“The pretence that corporations are necessary for the better government [management; LP] of the trade is without any foundation. *The real and effectual discipline which is exercised over a workman is not that of his corporation, but that of his customers.* It is the fear of losing their employment which restrains his frauds and corrects his negligence. An exclusive [monopolistic; LP] corporation necessarily weakens the force of this discipline” (ibid., 149; emphasis added).

Adam Smith’s notion of corporations is to be equated with the guild system that owned rather large monopolies spanning most trades and markets in medieval Europe. In contrast to the belief that a monopoly of coercion, which in this case is understood as the guild system, is the best instrument to provide social order, Adam Smith argues that it is the competitive market that does a better job at disciplining its citizens. The reason for this is that, in order to survive in a competitive market, people have to satisfy consumer demands and offer (better) products at lower prices. Simply put, the fear of losing one’s job forces people to work harder and produce more. In this sense, competing interactions between self-interested individuals on the market create a disciplining mechanism that is not exerted by any individual or organization. Thus, social order is brought about not (only) through coercion from above, be it through guilds, corporations or the state, but through the disciplining mechanism of the competitive market itself.

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<sup>4</sup> As is common knowledge, the “invisible hand” is only mentioned twice in Adam Smith’s works. Once in his *Theory of Moral Sentiments* (Smith 2009, 215) and a second time in *The Wealth of Nations* (Smith 1994, 485). Although the term is only mentioned twice in his works, I would argue that the concept itself maintains a central position throughout his economic theory and is also implicitly expressed in his concept of harmony between supply and demand.

This market mechanism leads to Adam Smith's second important assumption that the competitive market – or what he calls “perfect liberty” – leads to greater material wealth. The increase in material social wealth results not only from the mechanism of competition, but also from the positive connotation of self-interest and therefore the release of egotistical springs in human action from other moral obligations.<sup>5</sup> This moral transformation is closely intertwined with the changes in the legal framework that enabled possibilities to accumulate property. It can generally be said, therefore, that a shift occurred both in moral philosophy and in political and legal philosophy. Similar to John Locke's labor theory of property, Adam Smith declares, “The property which every man has in his own labour, as it is the original foundation of all other property, so it is the *most sacred and inviolable*” (ibid., 140: emphasis added). This concept of individual property is a clear critique of earlier, medieval forms of property that were based on feudal, customary law and, in certain cases, collective rights, in which individual appropriation was highly regulated and the possibility of the arbitrary confiscation of property through lords and monarchs was pervasive (Holt 1972, Schneider 1997, Blickle 2000, Zückert 2003, Linebaugh 2008). With this new concept of property – and the increase in durable, mobile property (money) – individuals could, at least theoretically, appropriate property through their labor and trade and accumulate it freely (Locke 2008, II §25-51). We will discuss Locke's theory of property in further detail later, but for the moment, it is important to note that this economic right to private property was understood as a natural or sacred right that stood above the political rights of absolute monarchs and states. We must therefore understand these new property rights as a central means to not only limit the power of the state, but also to open the door for wealth generation and accumulation. Here, the monopolistic structure of the sovereign ruler over a clearly delineated territory is replicated in the absolute sovereignty of an individual over its clearly delineated private property. From this perspective, the sacred

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<sup>5</sup> Although Adam Smith expresses an ambivalence towards this paradigm shift and emphasizes the importance of non-economic motives in human action (Smith 2009, Hirschman 1997, 108), he argues similarly to Montesquieu that economic motives enable the satisfaction of all other noneconomic values – or conversely, that all noneconomic motives (including “passions”) “feed into” and “reinforce” economic motives (Hirschman 1997, 109-110). I would, however, agree with Hirschman that although Adam Smith supported the positive outcomes of a competitive market (social order and an increase in material wealth), he found the means to this end problematic and unfortunate (ibid., 105). This ambivalence can be found in his description of the flipside of the division of labor which greatly increases material wealth yet simultaneously weakens the moral and intellectual capabilities of laborers (Smith 1994, 840). Elsewhere in Adam Smith's *Lectures*, he also expresses the problem of commerce leading to “debilitating luxury and corruption” (Hirschman 1997, 106).

character of the subject and of the right to absolute rule is maintained yet dispersed in the hierarchical and Cartesian structure of man's ownership over *res extensa*, irrespective whether one merely has property in one's own person or also in other things of the world. In this sense, the "possessive individualism" (Macpherson 2011) of the competitive market should not only limit the monopoly of power of absolute rulers, but should also – at least theoretically – undermine the monopoly power of corporations and guilds (Smith 1994, 136-156). Thus, the divine right to private property should ultimately provide the individual with the protection it needs from arbitrary political intervention, the decentralization of economic power and the freedom to accumulate property without limit, thereby supposedly increasing the general material wealth of society.

### **2.3. Self-Regulation, Limited Politics and the Open-Access Market**

Aside from these moral and legal paradigm shifts to a society geared towards material wealth accumulation, let us now discuss the concept of the "invisible hand" a little more. Although the "invisible hand" has often been criticized (Stiglitz 2006, Dupuy 2014, Amirud-Din and Zaman 2016),<sup>6</sup> it can be said that the metaphor still holds a central place in both economic thought and the social imagination in Western societies, ultimately laying the foundation for the legitimacy of the competitive market. Besides its disciplining and wealth generating function, another aspect of the market's ability to create social order is its supposed ability to self-regulate economic activities. First and foremost, this notion of self-regulation is not to be understood as democratic self-governance as previously discussed. Instead, supply and demand of goods and services are brought into equilibrium on their own – *without* political or state intervention. But how does this magical mechanism work? In the words of Adam Smith:

"It is thus [in a competitive market; LP] that the private interests and passions of individuals naturally dispose them to turn their stocks towards the employments which in ordinary cases are most advantageous to the society. But if from this natural preference they should turn too much of it towards those employments, the fall of profit in them and the rise of it in all others immediately dispose them to alter this faulty distribution. *Without any intervention of law*, therefore, the private interests and passions of men naturally lead them to divide and distribute

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<sup>6</sup> In this somewhat famous interview, Joseph Stiglitz argued "Adam Smith, the father of modern economics, is often cited as arguing for the 'invisible hand' and free markets [...] But unlike his followers, Adam Smith was aware of some of the limitations of free markets, and research since then has further clarified why free markets, by themselves, often do not lead to what is best. [...] [T]he reason that the invisible hand often seems invisible is that it is often not there" (Stiglitz 2006).

the stock of every society among all the different employments carried on in it as nearly as possible in the proportion which is *most agreeable to the interest of the whole society*" (Smith 1994, 680; emphasis added).

In this passage, it is assumed that a competitive market economy will, first and foremost, serve the demands of consumers and therefore society at large. As we can see, the motivation for this service is a pecuniary profit incentive. If too much investment from competing firms flows into a certain good or service, however, both the price and the rate of profit then decrease. This allocates investments into the production of other goods and services that are in demand and into places where greater profits can be realized. This balancing process also occurs for changes in demand, which drive prices and profit rates up or down and thus theoretically bring about changes in production.

These descriptions, images and metaphors that Adam Smith presented during the 18<sup>th</sup> century are readily found in today's economic discourse. The image that arises from this description of self-regulating competitive markets is that of individual entities of resources, producers, products and consumers freely and harmoniously interacting in a vacuum-like space. This is portrayed by the well-known simple graphs of introductory economics courses in which supply and demand curves shift and intersect according to changes in production and consumption. This balancing-out process between supply and demand is later renamed by neoclassical economists such as Walras, Arrow and Debreu as the general or competitive equilibrium theory (Walras 1965, Arrow and Debreu 1954). The assumption that a competitive market economy most efficiently allocates society's resources is understood today as Pareto efficiency or Pareto optimality.<sup>7</sup> Although Friedrich August von Hayek later criticized these notions of perfect equilibrium and Pareto optimality, his notion of *catallaxy* must still be understood as a re-interpretation of this old notion of a social order that spontaneously arises from the dynamic self-regulating functioning of the competitive market (Hayek 2013, Buto 1985, Vaughn 2013).

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<sup>7</sup> Amartya Sen criticizes the term Pareto optimality because it "is an extremely limited way of assessing social achievement" (Sen 1988, 35). He explains this with a rather alarming example: "A state in which some people are starving and suffering from acute deprivation while others are tasting the good life can still be Pareto optimal if the poor cannot be made better off without cutting into the pleasures of the rich – no matter by how small an amount. Pareto optimality is faint praise indeed" (Sen 1984, 95).



Furthermore, the self-regulation of the market must also be understood as a process in which power is supposedly shifted from producers consumers. This has already been mentioned in relation to Adam Smith's quote on the discipline of the market. Today, this is known as consumer sovereignty as presented by William H. Hutt in his book *Economists and the Public* (Hutt 1936, 1940) and as propagated by Milton and Rose Friedman in their book *Free to Choose* (1980). Along the same lines, Ludwig von Mises equated the choice to buy a product on the market to a vote. Mises writes,

“When we call a capitalist society a consumers' democracy we mean that the power to dispose of the means of production, which belongs to the entrepreneurs and capitalists, can only be acquired by means of the consumers' ballot, held daily in the marketplace” (Mises 1951, 21).

This interpretation of consumer sovereignty gives the market a political twist and reinterprets the competitive market as a consumer or market democracy. While decisions are made daily and producers must react accordingly to regular changes in demand in the market, in political democracy, citizens often only have the possibility of electing a representative every four years. According to this argumentation, the competitive market not only holds a quasi-divine and harmonizing self-regulating authority but is ultimately also a better form than any other secular political organization.

For specialists in the field of economics, it might appear to be highly imprecise and anachronistic to superficially compare classical economists with neoclassical, Austrian, and Chicagoan economists. Nevertheless, I would strongly argue that despite their different interpretations of (partial) equilibrium theory, in the end the main gist of their arguments often boil down to a common belief in the self-regulating abilities of the market and a more general common political vision. As has already been mentioned, a main economic problem for Adam Smith was the monopoly of power of guilds, on the one hand, and the interference of the state in the pursuit of material wealth, on the other. In fact, Adam Smith argues that it is precisely the intervention of politics in economic matters that lead to inequalities or disequilibria,

“[f]irst, by restraining the competition in some employments to a smaller number than would otherwise be disposed to enter into them; secondly, by increasing it



in others beyond what it naturally would be; and, thirdly, by obstructing the free circulation of labour and stock, both from employment to employment and from place to place” (Smith 1994, 136).

The state should therefore neither limit nor support free competition. However, it remains quite unclear where this “perfect liberty” truly lies. Nevertheless, it is a main consensus amongst economists that for markets to be competitive, no monopolies should exist, and this supposedly works best in markets that are open and free. Here, it is assumed that unlimited and self-regulating competition will eventually destroy all monopolies and decentralize economic power. While Adam Smith’s work was mostly aimed against the monopolies of guilds and the support thereof through the mercantilist system, economists of the late 19<sup>th</sup> and 20<sup>th</sup> centuries similarly criticized the socialist and welfare states for the same reasons. In all these cases, a main critique is the basic interference of the state’s monopoly of power in the “private” sphere of economics. The objection to state interference is thus not only based on the principles of negative rights to individual private property, but also on the maintenance of the self-regulating mechanism of the competitive market. States should therefore keep their hands off the invisible hand and be highly limited in their attempts to “artificially” constraint or abolish competition by closing markets or managing economic affairs.

Since Adam Smith, the answer to this state interference has therefore generally been, at least in principle, the opening of markets. For this reason, the new institutional economist Douglass North understands capitalist markets as “open access orders” (North et al. 2009). Similarly, Friedrich Hayek argues that economic freedom<sup>8</sup> cannot be limited to any community or nation, but that it is inherently open and international (Hayek 2007, 226). All national boundaries restricting the free movement of people and capital should be limited to a minimum, integrating all economies into one single common market (Hayek 1980, 258). Due to the international character of the market, nation states must pass their powers on to international bodies. The role of the state is thus limited to the impersonal and impartial implementation of international economic laws and the preservation of the apparent independence of economic and political realms of human interaction. As Douglass North et al. explain,

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<sup>8</sup> I refer here to the “negative” freedom to trade or exchange goods with others through contracts and the freedom to accumulate private property – without illegitimate state intervention.

“Open access societies limit access to violence [through the state monopoly on coercion; LP] while ensuring open access to political and economic activities. Because the political system in an open access order does not limit economic access, it *appears* that the economy exists independent of the political system. As the neoclassical economists fiction holds, markets exist and then politics intervenes. This seeming independence of politics and economics in an open access society overlays a much deeper and fundamental connection. It is here that *impersonality* occupies central stage” (North et al. 2009, 121; emphasis added).

As we see, this political neutrality of the state should create a legal setting in which all humans are, at least theoretically, equal and included in the impersonal market exchange. The separation of political matters from economic matters should ultimately secure the desired competition in the market that, in turn, should enable self-regulating markets to function properly (ibid.: 110-115, 121-2).<sup>9</sup>

## **2.4. Economist Kings, Authoritarian Liberalism and Structural Constraints**

In all these theories of the competitive market from Thomas Hobbes to Douglass North, the *political* question remains: Who shall rule? And who possesses the knowledge and insight to create economic laws and policies of the golden mean between hindrance and support of competition? The problem becomes most clear when we juxtapose the assumption of humans as self-interested and egotistical beings, on the one hand, with the necessity of a strong and neutral government that impartially imposes law on the other hand. Furthermore, a tension appears to arise between the necessity of a strong and overarching Hobbesian state that enforces strict property laws and contract agreements and its simultaneous self-limitation of not interfering in economic affairs.

For this reason, it is interesting to turn to the work of Friedrich August von Hayek, who provides a rather insightful solution to these tensions between the state and the market. Importantly, Hayek transforms the simple mechanistic understanding of equilibrium

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<sup>9</sup> As Douglass North et al. explain, “Open access orders prevent disorder through competition and open access. Consolidated, political control over violence combines with the rules governing the use of that violence to reduce and control access to violence. Constitutions and rule of law provide limits on governmental policymaking, thus limiting the ways in which citizens can feel threatened by the government that in natural states induce them to support the use of violence and extra-constitutional action to protect themselves. In addition [...] competition is intimately involved in enforcing the constitution and rule of law that support these limits on violence” (North et al. 2009: 115).

theory into a more dynamic and evolutionary concept of perpetual social adaptation. This evolutionary adaptation occurs in a spontaneous manner and therefore cannot be planned by any political body. Here, we are reminded of the self-regulating invisible hand. Furthermore, he also admits that the distribution of wealth in a market economy is not just and that the category of “justice” supposedly cannot be applied to markets. The reason for this is that there exist no individuals or groups who are responsible for the “spontaneous” distribution of resources (Hayek 2013, 233). Put somewhat bluntly, Hayek acknowledged that the open and competitive market can create much human suffering through as bankruptcies, unemployment, inequalities and economic crises (Dupuy 2013, 163-4). Yet, for him, these effects were merely inherent elements of what he understood as a dynamic and spontaneous social order. For this reason, he recognized that if people possessed the power to alter their social conditions – in what he named an “unlimited democracy” – they would most likely do away with the competitive market or would not develop it in the first place. In the words of Hayek:

“If in a society in which the spirit of enterprise has not yet spread, the majority has power to prohibit whatever it dislikes, it is most unlikely that it will allow competition to arise. I doubt whether a functioning market has ever newly arisen under an unlimited democracy, and it seems at least likely that unlimited democracy will destroy it where it has grown up. To those with whom others compete, the fact that they have competitors is always a nuisance that prevents a quiet life; and such direct effects of competition are always much more visible than the indirect benefits which we derive from it” (Hayek 2013, 415).

From Hayek’s perspective, people do not desire an open and competitive market arrangement because it implies a threat to what he calls “a quiet life” (ibid.). But understood more generally, the opposition to such a social arrangement is not only due to a desire to live a peaceful life, but also most likely due to a deep aversion towards the perpetual change, injustices and existential insecurities that open competitive markets bring about. It is interesting and important to note that Adam Smith also recognized this aversion towards open and competitive markets, as he writes,

“To expect, indeed, that the freedom of trade should ever be entirely restored in Great Britain, is as absurd as to expect that an Oceana or Utopia should ever be established in it. Not only the prejudices of the public, but what is much more unconquerable, the *private interests* of many individuals, irresistibly oppose it” (Smith 1994, 501; emphasis added).

According to Adam Smith, this aversion is due to the monopoly position of guilds and manufacturers who perceived open and competitive markets as a threat to their economic power. However, it can be assumed that this opposition is also shared by farmers and craftspeople, who also saw their existence to be threatened by increased competition. Interestingly, Adam Smith admits here that open and competitive market arrangements are somewhat utopian considering the egotistical nature of people. But isn't this peculiar? Suddenly, we see that both Adam Smith and Friedrich Hayek believe that people are in fact *too* self-interested and that they therefore want to limit market competition to their advantage. This can be interpreted as a social counter-reaction to the creation of open and competitive markets through economic deregulation that Hayek's contemporary Karl Polanyi describes as the "double-movement" in his book *The Great Transformation* (Polanyi 2001, 136-157). Polanyi understands this reaction to open and competitive markets as an attempt to alter and socially "re-embed" economic activities in order to satisfy their needs and desires (i.e. the desire to have a secure income and lead a somewhat stable life). In contrast, it appears as though Adam Smith and Hayek perceive these people to be blinded by their egoism which disables them from recognizing the supposedly more subtle and indirect achievements of a competitive market economy and, ultimately, from believing in the providence of the self-regulating market.

But who, then, is there to implement the rules of such a social arrangement that a large portion of the population does not desire? Interestingly, Adam Smith remains silent on the question of who shall rule. For Hayek, the creation of a spontaneous social order requires people who have an insight into its hidden fruits and impartial laws. Only these people are able to restrain themselves from the hubris of collectively creating social institutions according to their particular needs and desires. Paradoxically, only these people can implement social arrangements against the private interests of other people in order to enable a social order "spontaneously" come about through the pursuit of people's self-interest in economic affairs. Because most people do not possess this insight and humbling knowledge, Hayek literally argues that democratic politics must therefore be "dethroned" (Hayek 2013, 481-5). This is supposed to occur by creating a body of universal rules that primarily protects individual negative freedom from arbitrary interference and coercion, which is nothing other than the Hobbesian

protection of individual private property rights and the enforcement of contracts (ibid., 447). Furthermore, the democratic state should include both a Legislative Assembly and a Governmental Assembly that is elected by the entire population every couple of years. The Legislative Assembly consists of adults of a “relatively mature age for fairly long periods” (ibid., 448), more specifically between 45 and 60 years old and for a period of 15 years. This long period should keep members independent from the “fluctuating wishes of the electorate” and from political parties “committed to support particular interests and particular programmes of actions” (ibid.). In contrast to the Governmental Assembly, the Legislative Assembly is only elected by people of the age of 45 once in their lifetime who then choose someone of their generation whom they can “trust to uphold justice impartially” and to possess qualities such as “probity, wisdom and judgment” (ibid.). This political body would revise and sanction all laws, including those concerning taxation and regulations for safety, health and environmental matters. In other words, members would ultimately possess the power to create an “adequate framework for a functioning competitive market” (ibid., 450). To ensure that these laws are compatible with the constitution, Hayek also suggests that there should be a constitutional court that oversees the work of these two assemblies. The judges of this court are, in turn, appointed by the Legislative Assembly and would often include former members of this assembly.

As becomes clear, Hayek’s concept of a “democratic” state is not very democratic. The problem of conflicting interests is solved by a council of the wise who should be – in contrast to the other self-interested citizens – highly impartial. This group supposedly possesses the insight into the true nature of a free market society while simultaneously limiting citizens from democratically co-determining their laws and social arrangements in ways that might interfere with the price mechanism, market competition and the distribution of resources and wealth that results thereof. In other words, while Hayek understands the open and competitive market as an evolutionary process of discovery and adaptation dependent on the decentralized decision-making of individual agents, the legal framework of it remains abstract and immutable. While the interactions in the market should occur spontaneously, its laws are enforced and protected in a rather unspontaneous and calculated manner by supposedly wise and objective humans. Put somewhat crudely, it appears that Hayek is defending a social order that is ruled by technocratic economic experts or platonic economist kings. According to this

interpretation, I believe it to be adequate to argue that Hayek's concept of society based on an international, open and competitive market comes close to what Hermann Heller called "authoritarian liberalism" already in 1933 (Heller 2015[1933]). Furthermore, this interpretation of Hayek would allow us to agree with historian Philip Mirowsky who argues that although many economists and economic agents often argue for a minimalist state, they are in fact not *against* the state but merely want to take over the driver's seat in government (Mirowski 2014).

It must be acknowledged, however, that such an anti-democratic political model could easily be put off as a somewhat embarrassing blunder and obscure thought experiment of an elderly economist. Furthermore, it can be expected that most economists would reject such a political model, because it not only denies fundamental political freedoms, but it is also highly improbable to find these wise and impartial people. For this reason, it is often argued that open and competitive markets must be coupled with the periodic open and competitive elections of government officials (North et al. 2009). Here, we appear to have returned to Fukuyama's notion of the liberal democracy or democratic capitalism. I would like to show, however, that even with the existence of periodic elections, open and competitive markets nevertheless severely limit peoples' rights and capabilities to democratically alter their social arrangements. Wolfgang Streeck lucidly describes this problem in his book *Buying Time* (2013). Here, he explains that democratic citizens (what he calls a *Staatsvolk*) are bound to a national territory and have specific rights and obligations, including the equal right to vote and the ability to express one's opinion freely. In contrast, the people of the market (*Marktvolk*) are generally understood as internationally mobile investors and creditors, who possess the right to demand profits. Importantly, while the first group is more or less geographically bound, the second can move easily and more or less freely from one country to the next. Because the wellbeing of economies, societies and states are largely dependent on private investors, the *Marktvolk* becomes a second and, in some cases, even more important constituency. Here, elections are complemented with continuous auctions, public opinion with the rate of return on investment, and political loyalty with the "trust" of investors in market stability (Streeck 2013, 117-132). When the *Staatsvolk* attempts to raise taxes in order to decrease socio-economic inequalities or to implement environmental regulations in order to limit pollution, the *Marktvolk* often withdraws its investments due to its dissatisfaction with the potential decrease in profits. In turn,

these “investment strikes” (ibid., 50, 118-119) lead to unemployment and economic crises, thereby punishing the people for attempting to alter their polit-economic institutions and, ultimately, constraining democratic choices. In Streeck’s words,

“The limitation of national sovereignty by ‘market forces’ amounts to a limitation of the freedom of the *Staatsvolk* to make democratic decisions and a corresponding empowerment of the *Marktvolk*, which becomes increasingly essential for financing government decisions. Democracy at national level presupposes nation-state sovereignty, but this is less and less available to [...] states because of their dependence on financial markets” (Streeck 2013, 126; transl. P. Camiller).

Here, we are again reminded of the “countervailing power of private capital” (Held 1987, 160). Yet this time the economic power is not used to limit the power of absolute sovereigns and warring feudal lords, as was the case with Montesquieu and Adam Smith, but instead to undermine the democratic powers of a nation state. This is what Joshua Cohen succinctly calls the “structural constraints argument”. As Cohen explains,

“According to the structural constraints argument, the private control of investment importantly limits the democratic character of the state by subordinating the decisions and actions of the democratic state to the investment decisions of capitalists. Political decisions are structurally constrained because the fate of parties and governments depends on the health of the economy, the health of the economy on investment decisions by capitalists, and investment decisions by capitalists on their expectations of profits. While groups other than capitalists also control strategic resources, and can use that control to constrain decision-making, the structural constraints argument holds that the power of capitalists and the fact that everyone’s welfare depends on their decisions singles them out for special attention” (Cohen 1989, 28).

This problem of structural constraints can, on the one hand, be understood as a tension between national democracies and an international open market economy (Streeck 1998, Rodrik 2012). On the other hand, it also must be understood as a fundamental tension between the realms of society that are considered to be private and public. Within the classical Hobbesian state-market dichotomy, the maintenance of one’s life and livelihood is largely considered to be a private affair that occurs within the supposedly neutral framework of the state – and is therefore subjugated to the arbitrary decisions and powers of the *Marktvolk*.

For this reason, I would agree with the political scientist Charles E. Lindblom who provocatively argues in his article *The Market as Prison* from 1982 that the open and competitive market can be interpreted as a type of political prison that does not entirely



stop, but substantially represses institutional change (Lindblom 1982, 326). As he explicates,

“Many kinds of market reform automatically trigger punishments in the form of unemployment or a sluggish market economy. [...] Punishment is not [however; LP] dependent on conspiracy or intention to punish. If, anticipating new regulations, a businessman decides not to go through with a planned output expansion, he has in effect punished us without the intention of doing so. Simply minding one’s own business is the formula for an extraordinary system for repressing change. [...] That result, then, is why the market might be characterized as a prison. For a broad category of political/economic affairs, it imprisons policy making, and imprisons our attempts to improve our institutions. It greatly cripples our attempts to improve the social world [...]” (ibid., 325-329).

As we see, even without Hayek’s impartial economic rulers, once the institutions of individual private property and the open and competitive market are in place, the actual possibilities of people to democratically alter these central institutions remain severely limited. In this sense, we might even say that Heller’s authoritarian liberalism does not even require Hayek’s economist kings, but rather functions through the institutions of the open and competitive market. Here, it doesn’t matter who is in the drivers seat, because whoever it is must acquiesce to the demands of the market. Thus, it can be concluded that both the supposedly neutral legal framework of the state and the self-regulating, open and competitive market undermine our concept of democracy, in which people possess the rights and capabilities to co-determine their social conditions.

This being said, this rather negative portrayal of the market as a political prison should not deny the positive aspects of capitalist markets. It cannot be denied that open and competitive markets have expanded the realm of individual freedom and increased the number of goods that a large portion of the world’s population can enjoy today. In this sense, we must agree with Fukuyama that democratic capitalism is a good thing. Nonetheless, as I have shown, the institutions of the open and competitive market inherently limit the democratic freedom that people can realize. This might not be a problem if everyone was satisfied with life within the framework of an open and competitive market. But as Adam Smith and Hayek already acknowledged, this is not the case. Furthermore and as we will discuss in more detail later, social arrangements that prioritize individual freedom based on the negative rights of private property bring about serious social, economic, and ecological problems that often cannot be politically solved due to the structural constraints of capitalist markets. For this reason, it might be



necessary to develop the understanding for other social arrangements that are more conducive to our more demanding understanding of democracy and thereby provide people with the capabilities to institutionally adapt and collectively solve threatening problems. As already mentioned, one alternative to democratic capitalism that is increasingly being discussed is that of the commons. For this reason, let us now turn to this discourse on the commons and analyze whether it provides us with a normatively sound and feasible alternative “beyond markets and states”. In order to do this, I will firstly examine why commons are often assumed to fail and then, in a second step, examine how a sustainable and democratic governance of commons is nevertheless possible.

### **3. Garret Hardin’s Tragedy of the Unregulated Commons**

Before we can scrutinize whether the commons provide us with a reasonable alternative to the social institutions that underlie democratic capitalism, we must firstly analyze the widely assumed downfall of commons, as expressed in Garrett Hardin’s influential article *The Tragedy of the Commons* from 1968. Generally put, although the concept of the commons can be traced back much further, Hardin’s article has greatly increased the interest in the topic and framed the heated debate that has lasted until today.<sup>10</sup> For this reason I will, in this short chapter, firstly analyze Hardin’s argument why commons are necessarily overused. In a second step, I will discuss his suggestions of how to overcome this tragedy. In a nutshell, I will demonstrate that Hardin’s theory is not a critique of the commons per se, but rather of unregulated commons, which bring about open and competitive social arrangements.

#### **3.1. The Tragedy: Maximization Strategies and the Double C-Double P Game**

To begin with, it is noteworthy to mention that Garrett Hardin’s theory implicitly repeats the basic arguments of Malthus’ *Essay on the Principle of Population* from 1798.

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<sup>10</sup> According to Elinor Ostrom: “Hardin’s article is one of the most cited publications of recent times as well as among the most influential for ecologists and environmental policy researchers. Almost all textbooks on environmental policy cite Hardin’s article and discuss the problem that Hardin so graphically identified” (Ostrom 2008b).

Accordingly, Hardin opens his theory of “The Tragedy of the Commons” with two general yet conflicting assumptions. His first premise is based on the laws of conservation and postulates that resources on earth are scarce. His second premise is based on biologists’ observations that all living organisms have an inherent tendency to perpetually increase their population size to secure their survival (Hardin 1968, 1243). Understood mathematically, this existential drive leads to the exponential growth of populations. In nature, however, this tendency is kept in check by limited resources and other scarcity-related mechanisms such as hunger, disease, predators and, ultimately, death. In comparison to other animals, humans are reflexive beings that must make choices between the forms of their consumption, or rather between the amount of resources they utilize per person and their population size. For this reason, Hardin dismisses the utilitarian principle of “the greatest good for the greatest number” and declares that we must choose between maximizing population and maximizing goods – or that we find a middle way between these extremes. With this reasoning, Hardin sets the stage for his critique of “laissez-faire” policies in reproduction and, more generally, for commons.

Hardin explains this conflict between limited ecological resources and both demographic and economic growth with the metaphor of a pasture commons. Here, a pasture is held in common and is “open to all” (Hardin 1968, 1244) to be used by herders for the grazing of their privately-owned cattle. Hardin borrows this “heuristic image” (Hardin 1977a, 68) from William Foster Lloyd’s pamphlet *Two Lectures on the Checks of Population* that was first published in 1833 and utilizes it as a model to portray and understand the relationship between humans and their environment. For us to comprehend the underlying problem, Hardin’s two premises must now be reformulated. Firstly, the scarcity of resources implies that the carrying capacity of a common pasture is limited. Hardin therefore defines the carrying capacity of a resource as “the maximum number of animals that can be sustained by this food source *year after year, without a diminution of the quality of the pasture*” (Hardin 1993, 207; emphasis i.o.). The second premise that postulates the supposed natural exponential growth in population sizes of all living creatures must be translated into the size of the herds that are bred and controlled by the herders. While this second premise originally assumed an innate biological drive to increase one’s own population size, we must now ask ourselves why herders desire and choose to increase the number of their cattle.

Hardin answers this question within a general framework of methodological individualism and in both biological and utilitarian terms. Although not explicitly formulated by Hardin, his biological reasoning provides us with a Social Darwinist and “existential” understanding of the tragedy of the commons. In contrast to other animals, with humans, an innate drive to survive can manifest itself either in the increasing number of human offspring produced or in the amount of resources accumulated for future production and consumption. When population sizes and consumption levels are far below the carrying capacity of the resource, abundance prevails and the use of commons provides no serious problems. In Hardin’s words: “So long as there is a great sufficiency of pastureland, commonized real estate is efficient: no fences need be maintained and there is little call for human supervision” (Hardin 1993, 216). This implies that although the carrying capacity creates a limitation to economic and demographic growth, if human existence remains largely below these boundaries, people could nevertheless theoretically experience a certain sufficiency or even abundance. Yet, due to the supposedly natural urge to survive through the growth in population size or wealth accumulation, resources become scarcer. This increase in scarcity, however, ironically leads to a greater existential threat and an intensified attempt to secure one’s survival through more growth and accumulation.

Although the foundation of Hardin’s argumentation is based on this “biological” reasoning, he resorts to utilitarian terms and rational choice theory to explain the tragedy of the commons. Accordingly, Hardin declares that “[a]s a rational being, each herdsman seeks to maximize his gain” (Hardin 1968, 1244). Along this line of thought, he assumes that each herder calculates the utility of increasing the number of animals in their herd and that they realize that one additional animal increases the individual’s utility (meat, milk etc.) by +1 while the negative effects of overgrazing are distributed among all herders, creating a fraction of -1 utility for themselves. In other words, the responsibilities for losses do not correlate with the gains of one’s actions. For this reason, Hardin calls this situation the “Double C-Double P Game”, in which costs are communized and profits are privatized (Hardin 1993, 237). By assuming that other humans are also rational beings and that they will act accordingly, each herder realizes that resources will predictably become scarce and that they *must* act in this manner so

as not to be a “sucker.” Hardin explains this dynamic and the problematic outcome thereof in this central passage:

“Adding together the component partial utilities, the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another; and another.... But this is the conclusion reached by every each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is *locked* into a system that *compels* him to increase his herd *without limit* – in a world that is limited. *Ruin is the destination toward which all men rush*, each pursuing his own best interest in a society that believes the freedom of the commons. *Freedom in a commons brings ruin to all*” (ibid., 1244; emphasis added).

The tragedy of the commons can thus be understood as a “race to the bottom” in which each farmer attempts to gain as much as possible from the common pasture before its resources are completely depleted. While individuals strive to survive in the short term, then, the conditions necessary for the perpetual reproduction of the group are undermined and destroyed in the long run. In other words, the tragedy of the commons portrays a type of Hobbesian state of nature in which subjective rationality ultimately leads to a social and objective irrationality. Due to the assumed functioning of human nature in such a social setting, Hardin declares that this destructive dynamic in the tragedy of the commons is “inevitable” (ibid.).

### **3.2. Social Institutions Against Tragedy: Privatism or Socialism**

Yet, in spite of this supposed inevitability, Hardin argues that the situation can be changed. In this sense, Hardin sees the problem not in a supposed egotistical human nature or in a lack of individual morality but in the institutional organization of society and of its resources (Hardin 1993, 218). As Hardin admitted in an article published thirty years later, the actual problem of the commons is not the commons per se, but rather that they are *unmanaged* and open to all (Hardin 1998). Particularly, the problem of the tragedy of the commons is that the use of its resources is institutionally structured in an open and highly competitive manner. In this sense, the tragedy of a pasture commons is not limited to an agricultural society but can be understood as metaphor for the general problem of open and competitive social arrangements in which profits can be privatized and costs can be spread onto the rest of society (Hardin 1979). Interestingly, Hardin also sees this problem in Adam Smith’s “laissez-faire” policies of

unregulated free enterprise and its adverse effects on pollution<sup>11</sup> (ibid., Hardin 1968, 1244, Hardin 1993, 223) and the supposedly Marxist principle of the open-access principle “to each according to his needs” (Hardin 1977b). According to Hardin, both cases create social arrangements in which rights and responsibilities do not correlate and therefore ultimately lead to over-use and destruction. However, I would add here that the negative externalities of these open and competitive social arrangements also include social inequalities and other related social problems such as unemployment economic crises and the like. The ability of all agents to appropriate an unlimited amount of resources implies that certain (stronger) parties can inevitably accumulate more, ultimately leading to the limitation of access to these resources for others.<sup>12</sup> Hardin argues that this lack of regulation opens the possibility for a small minority to free-ride and “bleed the jointly owned resource dry,” which, in turn, forces others to “follow their lead” (Hardin 1979). According to Hardin, this problem cannot be resolved through a plea for more moral behavior because “a system that depends only on conscience rewards the conscienceless” (Hardin 1972, 129). Or, specifically, an open-access system penalizes the prudent and rewards the reckless and more powerful.

Hardin’s answer to this problem is, at least at first glance, relatively simple: “mutual coercion, mutually agreed upon by the majority of the people affected” (Hardin 1968, 1247). In order to break this tragic vicious circle, everyone must agree to be forced to follow rules and regulations – without exception. Only through a social contract that limits everyone’s individual freedom can the freedom of everyone be secured in the long run. Here, we are reminded of Hobbes. But what is an institutional arrangement based on mutually agreed-upon coercion supposed to look like? Hardin’s response to this question is, again, quite straightforward: “privatism” or “socialism” must replace all forms of unmanaged “commonism” (Hardin 1978, 315, Hardin 1979, Hardin 1993, 218-9). “Privatism” occurs, according to Hardin, when both the land and animals are owned by the same individual. Responsibilities and gains, resources and harvests correlate fully. This property regime, however, becomes problematic when ownership is separated from occupancy and operation, which can lead to new problems of over-use

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<sup>11</sup> In relation to the problem of externalities and pollution, Hardin writes that “[W]e are locked into a system of ‘fouling our nest,’ so long as we behave only as independent, rational, free-enterprisers” (Hardin 1968:1245). For further thoughts on the problem of laissez-faire policies and externalities, see also Hardin 1993, p. 240.

<sup>12</sup> We will return to the social effects of this mechanism in more detail when analyzing what I call the tragedy of the market.

and exploitation. While “socialism” is similar to “privatism” in that responsibilities and gains correspond, it must be understood as a regulated common because it is collectively owned, managed and harvested. However, this property regime is problematic because larger groups often require appointed managers who administer and enforce rules. This delegation of power leads to the fundamental problem of *Quis custodiet ipsos custodies?* Or in English: Who will watch the watchmen themselves?<sup>13</sup> Due to the problems of both property regimes, Hardin argues that neither form is clearly better than the other. It is important to Hardin that the tragedy of unmanaged commons is avoided through either regime or – as is most often the case – through a mixture of the two, depending on the different empirical conditions.

Despite this openness towards both political systems and property regimes, Hardin’s position must nevertheless be interpreted as Neo-Hobbesian (Ophuls 1977, 148). The reason for this is that in both cases of privatization and socialization, Hardin argues that freedom must be limited by coercion implemented from “without”:

“The persistent dream of freedom is the suicidal dream of a state in which individual conscience is the only coercive force. But in truth, when we are dealing with real human beings rather than paragons, if ruin is to be avoided in a crowded world, people must be responsive to a coercive force *outside their individual psyches*, a ‘Leviathan,’ to use Hobbes’ term. [...] In a crowded world, this is the closest we can get to freedom” (Hardin 1978, 314; emphasis added).

He states that because it cannot be assumed that all humans are virtuous, freedom – and humans’ biological survival, for that matter – can only be protected through coercive laws that precisely limit this freedom. And these limiting rules must ultimately be implemented from without, from outside the affected individual’s psyche and thus from outside the affected group.

In summary, it can be claimed that Hardin’s thesis has brought about three rather significant fallacies. Firstly, it is often mistakenly assumed that commons inherently will be overused, while Hardin actually argues that the *unmanaged* commons leads to tragedy. Here, I would agree with Hardin. Secondly, it is often mistakenly believed that the destruction of common resources can only be averted if privatized or socialized. In this case, socialization is often interpreted as nationalization through the state. It can

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<sup>13</sup> The literal translation refers to guards and not watchmen, but the problem remains the same: The social control of those who must create and enforce rules.

generally be said that this dualism has reinforced the often held assumption popular during and since the cold-war that the only options people have to organize society are either according to the principles of the market or to those of the nation-state. This is problematic, however, because it simply brings us back to the market-state dichotomy that we had hoped to escape in democratic capitalism. Lastly, Hardin assumes that while people are theoretically able to democratically agree on laws to limit their freedom and destruction of the planet, the implementation of these laws must, however, come from an external leviathan sovereign. If these options are truly the only possibilities available, three questions remain: Firstly, how are people able to enter a contract that might be rational for society in the long run, while being harmful or irrational for the individual in the short run? Secondly, are private property and state ownership truly the only forms of resource management available to humans? And thirdly, where will this virtuous, absolute leviathan that can administer and enforce laws “from the outside” come from? Considering these problems that remain unsolved in Hardin’s work, it appears necessary to explore Elinor and Vincent Ostrom’s research on the sustainable and democratic self-governance of commons, which provides us with theoretical and empirical answers to these diverse questions.



## 4. Overcoming the Tragedy with the Ostroms

After having analyzed the social structure and logic of the tragedy of the unmanaged commons, we must now examine how to avert this supposedly inevitable catastrophe. An important characteristic of this answer is that it aims to provide us with a different conception of social arrangements that overcome or dissolve the traditional market-state dichotomy of democratic capitalism, which inherently limits democratic potentialities to adapt social institutions and solve social problems. In order to do this, we will turn to the work of Elinor and Vincent Ostrom on the sustainable and democratic governance of the commons. The exploration of their work will be structured as follows. Firstly, I will analyze what Elinor Ostrom understands as “grim” social dilemmas that underlie not only the tragedy of the commons but almost all forms of collective action. In a second step, I will consider their arguments against a centralized and hierarchical state or “monocentric order” as a possible answer to these social dilemmas. In a third step, I will critically reflect the diverse problems or tragedies that result from privatization and the market. After having discussed the limitations of both monocentric orders and markets, I will then turn to the Ostroms’ work on how collective action can be cultivated and realized in order to overcome social dilemmas. A central feature of this is the development of reciprocity, trust and reputation through communication of the affected agents. The stabilization of this collective action requires, in turn, the democratic definition of rules for the use of common pool resources and the mutual monitoring thereof. I will then discuss these ideas with reference to Elinor Ostrom’s eight design principles for the sustainable self-governance of commons. In a final step, I will explore how these insights from microsituational settings can be scaled up into what Elinor and Vincent Ostrom call a polycentric system of democratic governance. Last but not least, I will critically reflect the limits and blind spots of their work.

Before delving into this investigation, I would like to shortly explain why I largely focus on the work of Elinor Ostrom and only marginally on that of Vincent Ostrom. The reason for this is rather simple: Elinor Ostrom’s extensive empirical and theoretical work provides us with an amazing array of examples of common pool resources and public services, including fisheries, forests, pastures, irrigation systems, water basins and police security. Throughout her life, Elinor Ostrom searched to define the contingent



conditions of possibility for overcoming the tragedy of the commons – or put differently, the conditions of possibility for human cooperation, democratic self-governance and ecological sustainability. And it is for this work that she then received the Nobel Prize in Economics in 2009. In contrast, while Vincent Ostrom also used the tragedy of the commons as a starting point for the development of his ideas, his focus was less on commons and more on the political theory of a polycentric or federal model of the state that was based on many of Elinor Ostrom's more empirical insights. For this reason, while I will focus on Elinor Ostrom's work, I also will integrate Vincent's arguments and ideas in order to complement those of Elinor.<sup>14</sup>

#### **4.1. Collective Action and “Grim” Social Dilemmas**

In the theories of Elinor and Vincent Ostrom, the notion of democracy is of central importance as a means to overcome the tragedy of the commons. While much literature on democracy focuses on issues such as voting behavior, party politics, parliamentary institutions and the state, Elinor Ostrom approached the problem of democracy from a micro-situational perspective of game theory, social dilemmas and collective action. In her Presidential Address of the American Political Science Association in 1997, Elinor explains the importance of collective action theory for political science – and for almost all human interactions:

“The theory of collective action is *the* central subject of political science. It is the core of the justification of the state. Collective action problems pervade international relations, face legislators when devising public budgets, permeate public bureaucracies, and are at the core of explanations of voting, interest group formation, and citizen control of governments in a democracy” (E. Ostrom 1998, 1; emphasis i.o.).

According to Ostrom, collective action dilemmas are present in “all major economic, political, and social projects requiring individuals to associate in allocation activities” (E. Ostrom 2003, 21). For this reason, it has been her lifelong aim to develop intellectual tools to understand “the capabilities and limitations of self-governing institutions for regulating many types of resources” (E. Ostrom 2008a, 2).

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<sup>14</sup> In order to deal with the rather awkward and cumbersome repetition of the names Elinor Ostrom and Vincent Ostrom, I will sometimes also refer to the two authors simply as Vincent and Elinor.

In this sense, Elinor Ostrom understood the “tragedy of the commons” as a collective action or social dilemma, which, in turn, can also be understood as a prisoner’s dilemma between two people (E. Ostrom 2008, 2-5). According to Ostrom, a social dilemma refers to diverse situations in which “individuals make independent choices in an interdependent situation” (E. Ostrom 1998, 3). Such dilemmas occur “whenever individuals in interdependent situations face choices in which the maximization of short-term self-interest yields outcomes leaving all participants worse off than feasible alternatives” (ibid., 1). As already seen in the analysis of Hardin’s model, these dilemmas would theoretically generate defect strategies that would ultimately lead to suboptimal outcomes (resource depletion, inequalities etc.) which are defined in economic literature on game theory as Pareto-inferior Nash-equilibria or, in more colloquial terminology, as a “tragedy”. In general terms, Ostrom argues that these models boil down to the “free rider problem”, which she defines as such:

“Whenever one person cannot be excluded from the benefits that others provide, each person is motivated not to contribute to the joint effort, but to free-ride on [or take advantage of; LP] the efforts of others. If all participants choose to free-ride, the collective benefit will not be produced” (E. Ostrom 2008, 6).

The reason for the general fascination with these models is that their structures create a situation in which the best individual strategies ironically lead to a suboptimal joint outcome. For this reason, Elinor Ostrom writes, “The paradox that individually rational strategies lead to collectively irrational outcomes seems to challenge a fundamental faith that rational human beings can achieve rational results” (E. Ostrom 1986, 4). It must be noted that this insight is quite striking because it contradicts, first and foremost, the previously mentioned assumption in economics that individual subjective interests lead to positive social outcomes. This is the basic principle of the invisible hand that underlies belief in the self-regulation of the market.<sup>15</sup> Furthermore, these dilemmas also suggest, more generally, that cooperation is impossible or, rather, irrational for

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<sup>15</sup> It could be argued that the two models (the “invisible hand” and the “tragedy of the commons”) cannot be compared because one model is based on private property regimes and the other on common property regimes. In economic theory, the answer to the problem of over-use and tragedy is therefore privatization. We will discuss the limits and problems of privatization in more detail later. For the time being, however, it is important to note that privatization cannot overcome the problem of tragedy because people are intersubjective beings that share a common reality and therefore also share certain goods that cannot be privatized. One example of this shared reality is, for example the shared legal structure of the market itself. To illustrate the relationship between the market and the commons, we could thus say that the commons provides the stage or background setting for the market. While the self-regulation of the market might function *on* the stage, I argue that it inherently will lead to the destruction *of* the stage.

supposedly rational agents within specific social arrangements. Although Ostrom agrees with Hardin that “from within the game, participants are trapped in an eternal struggle of tragic proportions” (ibid., 6), she questions whether such a situation truly represents the full diversity of social interactions and institutions.

Elinor Ostrom thus does not only criticize the simple model based on this “grim trap” but also the policy prescriptions that display an equally “grim character” that has resulted from such models (E. Ostrom 2008, 8). Her main critique aims at the simple dualism presented and discussed as alternatives to the tragedy: Centralized state authority versus privatization and the market. Before analyzing the Ostroms’ own alternative to the tragedy, I would like to analyze their interpretations and critiques of the centralized state and the market in more detail in order to clarify the limitations of these two models as answers to the problem of the tragedy of the commons. Let us therefore begin with the centralized state, which Vincent Ostrom has coined as the “monocentric order”.

## **4.2. The Tragedy of Monocentric Orders**

According to Vincent Ostrom, a monocentric order is realized according to a theory of sovereignty where there is only one single center of ultimate authority. This is the Hobbesian model of the Leviathan that Hardin propagated. The assumption underlying this idea is that to overcome perpetual war or the destructive competition between private, egotistical individuals, a single center of authority must create a single system of law for all. In order to be able to do this, the center of authority must be “the source of law, [...] above the law, [and] cannot be held accountable to law” (V. Ostrom 2011b, 352-3). Furthermore, this law is enforced by the same, single source of authority (ibid., 353-4). The conflicting violence between factions is therefore resolved by creating a “monopoly of the legitimate use of physical force in the organization of a society” (ibid., 353; emphasis omitted). The monopoly of the use of force in society transforms all these quarrelling individuals and groups into a unified organization called “the state.” Abstractly speaking, oneness is to supersede, contain and structure the many. The function of such a monocentric order is to “dominate [...] all patterns of organization that are subject to law” (ibid.) so as to limit and enable individual freedom.

With reference to Max Weber, Vincent Ostrom further argues that a monocentric order is not only characterized by a single center of supreme authority, but that it is closely associated with and dependent on hierarchical command structures that are realized in a bureaucratic form of organization. In general terms, the command structure in monocentric, hierarchical organizations is justified based on an increase in efficiency, rationality and objectivity. The hierarchical command structure and the monopoly of the use of force in society enables monocentric orders to impose effective sanctions to prevent free-riding and to collect levies for protecting and developing both common-pool resources and public goods (V. Ostrom 1974, 58-9). This ability to enforce rules and collect taxes provides an efficient answer to the relatively high deliberation and transaction costs created when pooling resources by creating contracts between all individuals. Furthermore, the management of a resource through one organization enables externalities to be internalized (*ibid.*, 63).<sup>16</sup> Thus, monocentric bureaucracies are considered to increase the efficiency and rationality in the organization of human affairs.

In relation to the efficient implementation of impartial and uniform laws, Elinor Ostrom emphasizes, however, that uniform rules are problematic when dealing with commons, because common pool resources are often very diverse. If uniform rules are applied to diverse contexts, the problem is that either false incentives are created or people do not take the rules seriously and thus end up pursuing short-term maximization strategies nevertheless (E. Ostrom 2008a, 11). This problem is sometimes accentuated when states nationalize resources that were held in common by local communities yet are unable to monitor and enforce a regulation thereof, ultimately transforming a common-property resource into an unregulated open-access resource (*ibid.*, 23, E. Ostrom 1999a, 495).

Vincent Ostrom's rather fundamental critique of monocentric orders is not, however, based on common-pool resources, but rather on the widespread and well-known critique of bureaucratic systems in welfare states, made especially popular by the work of Ludwig von Mises, Gordon Tullock and, more generally, public choice theory. Here, it is argued that individuals working in large bureaucracies are – like all humans – self-

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<sup>16</sup> It is important to note that this economic rationale of vertical integration drives both public agencies and private firms to become centralized, hierarchical organizations, as Robert Coase argued in his article *The Nature of the Firm* (Coase 1937, 390-1, V. Ostrom 1974, 59). This insight radically contrasts the common interpretation of bureaucracy as a form of organization only found in governments and public administration.

interested, which ultimately leads to corruption and to a loss of control of executives over the organization. Elinor Ostrom also points to the paradox that it is assumed that the Leviathan will be a wise and ecological ruler while the individuals using the resources are short-sighted, ecologically ignorant egoists (E. Ostrom 1986, 8). Second, she argues that state bureaucracies are not exposed to competition and are therefore prone to being inefficient and unresponsive to the diverse and changing demands of citizens and consumers. Continuing this critique, Vincent Ostrom argues that monocentric, hierarchical bureaucracies enable a monopoly over the legal instruments of coercion and thus provide “unique opportunities for a few to exploit the many” (V. Ostrom 1993, 59), opening the door to oppression and tyranny. Vincent finalizes this critique of monocentric, bureaucratic orders by concluding – again with reference to Max Weber – that such organizations can become self-perpetuating organizations that reduce all individuals – rulers and ruled – to subservient cogs in an “iron cage” (Weber 2001, 123, Ostrom 2011b). This leads us to a supposed “paradox of bureaucracy” in which collective attempts to enable individual positive freedom – through welfare services, for example – will be undermined by an unresponsive and possibly corrupt paternalism of governmental officials (V. Ostrom 2011b, 355-6).<sup>17</sup> Furthermore, through its individualistic conception of rights, a monocentric bureaucratic (welfare) state supports the atomization of individuals and, thereby, undercuts the desire and capacities of individuals to collectively care for common goods (Allen and Ostrom 2008, 148). According to Vincent Ostrom, the monocentric order thus appears to reproduce the tragedy of the commons through its monopoly of the use of force and its corrupt and exploitive bureaucratic administration.

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<sup>17</sup> The assumption that a monocentric bureaucracy is a threat to individual positive freedom is famously formulated in Tocqueville’s understanding of “democratic despotism” where he writes: “That power is absolute, minute, regular, provident, and mild. [...]The will of man is not shattered, but softened, bent, and guided; men are seldom forced to act, but they are constantly restrained from acting. Such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes, and stupefies a people, till each nation is reduced to nothing better than a flock of timid and industrious animals, of which the government is the shephard” (de Tocqueville 2004, 861-2). Although the state that Tocqueville is describing is not the same as the one Vincent Ostrom lives in, Vincent nevertheless repeats this argument throughout his work (e.g. V. Ostrom 1997, 278). In a different form, Claus Offe also presents a similar argument in his essay *Contradictions of the Welfare State* (1985) in which he explains that the socialist Left also believe that the welfare state undermines individual self-determination: “[T]he welfare state can be looked upon as an exchange transaction in which material benefits for the needy are traded for their submissive recognition of the ‘moral order’ of the society which generates such needs. One important pre-condition for obtaining services of the welfare state is the ability of the individual to comply with the routines and requirements of welfare bureaucracies and service organizations, an ability which, needless to say, often is inversely correlated to need itself” (Offe 1985, 156).

Before discussing the Ostroms' answer to the problems of monocentric orders, this somewhat crude and problematic depiction of monocentric orders should be critically reflected. Firstly, it must be emphasized that the notion of a monopoly on coercion appears, at least to me, to be an important means in overcoming conflicts. Monocentric orders provides a means to define rules that limit free-riding, enforce sanctions and redistribute scarce resources. Ultimately, these are similar mechanisms that Elinor Ostrom describes in her eight design principles for sustainably self-governing commons. Here, the monopoly of force can be understood as a pooling of coercive powers in a certain institutional arrangement. However, the difference to commons is simply that the state is a much larger institution with longer chains of trust and accountability than the social arrangements that Elinor analyzed. The mere fact that monocentric can be used as a means of tyranny and oppression should not, however, imply that we must entirely reject the concept of a monocentric order. This would be like throwing out the baby with the bath water. We have already confronted this problem in Hardin's critique of commons, which turned out be a critique of unregulated commons. Thus, the question is how the monocentric power of the sovereign can be controlled and how the monopoly on the use of force can be made legitimate and just. Furthermore, the question arises of how bureaucratic administrations should be designed to make them more responsive, effective and accountable. We will return to these questions in more depth while discussing polycentric orders and the relation between the state and commons. Before that, however, let us turn to the other answer to the tragedy of the commons: Privatization and the market.

### **4.3. The Tragedy of Privatization and the Market**

Due to this widespread critique of the state, it has often been propagated that privatization is a better answer to the tragedy of the commons (Demsetz 1967). As we have already touched upon in our discussion of Garrett Hardin's work, the main arguments for privatization are the internalization of costs and thus the correlation of costs and benefits. And as Adam Smith and other economists have argued, competitive market arrangements, in turn, provide us with more responsive and efficient social institutions.

Interestingly, Elinor and Vincent Ostrom do not discuss privatization or the market very much. While Vincent is fierce in his critique of the state, he remains rather silent on the problems of the market. In fact, while he speaks of a “moral economy”, he simultaneously defends the open and competitive market using arguments similar to those that we have previously discussed (V. Ostrom 2011a, 191, V. Ostrom 1991, 229-231, V. Ostrom 1997, 107).<sup>18</sup> In contrast, Elinor sparingly mentions the problems of an open and competitive market. To be fair, we can generally assume that this has to do with the historical context of the Cold War they lived and wrote in.<sup>19</sup> Nevertheless, they do provide us with some rare insights on the problem of privatization and markets within their empirical and theoretical framework. The reason why I insist on a critique of privatization and markets here is that we must understand why privatization and markets are problematic in more detail in order to justify our defense and development of commons. Conversely, if privatization and markets work well, there is no reason to change their institutional arrangements. As Elinor Ostrom says herself, “If it ain’t broke, don’t fix it” (Ostrom 2008a, 211).

#### **4.3.1. Different Types of Goods (Part I)**

Before turning to privatization and the market, it is important to note that Elinor and Vincent Ostrom do not deal with these issues in detail because they often simply assume a somewhat clear categorization of goods as already developed and discussed in the public choice theory (Buchanan 1965). In distinguishing between goods, they emphasize

<sup>18</sup> It must be noted that Vincent Ostrom does not like to use the term capitalism. He explains in an interview: “Probably the best way to characterize our approach would be to start with one of our most influential themes: the idea that broad concepts such as ‘markets’ and ‘states,’ or ‘socialism’ and ‘capitalism,’ do not take us very far in thinking about patterns of order in human society. For example, when some ‘market’ economists speak of ‘capitalism,’ they fail to distinguish between an open, competitive market economy and a state-dominated mercantile economy. In this, they follow Marx. He argued that ‘capitalism’ has a competitive dynamic that leads to market domination by a few large monopoly or monopoly-like enterprises. But what Marx called ‘capitalism,’ Adam Smith called ‘mercantilism.’ Similarly, many authors who write about ‘capitalism’ fail to recognize the complexity of capitalist institutions. They overlook the rich structures of communal and public enterprises in societies with open and highly competitive market economies. Instead, we should expect to find some combination of market and non-market structures in every society, and we should recognize the complex configuration of institutions behind labels such as ‘capitalism’” (V. Ostrom in Aligica and Boettke 2009, 142). It is, however, quite peculiar and problematic in Vincent’s work that while he demands an exact and differentiated analysis of the institutions of markets, he never – at least to my knowledge – provides such a differentiated analysis himself. I do, in fact, hope to develop such a differentiated understanding of markets in this book.

<sup>19</sup> In an interview, Elinor Ostrom was once asked “Do you take issue with those who call your theories ‘implicitly socialistic?’”, Her answer to this question was: “Yes. I don’t think they are supporting socialism as a top-down theory. A lot of socialist governments are very much top down and I think my theory does challenge that any top-down government, whether on the right or the left, is unlikely to be able to solve many of the problems of resource sustainability in the world” (E. Ostrom in Klein et al. 2013, 541).



two essential characteristics: Exclusion and rivalry or joint-ness of use. The divisibility of goods creates the possibility of excluding others from its use, ultimately enabling a specific good or service to be privatized and traded as a commodity on the market. Access to such a good is only allowed when the terms and conditions of the vendor are met (Ostrom and Ostrom 1999, 76). In other words, access to these goods depends on a person's purchasing power or, in more plain language, on how much money a person has. In the case of goods that cannot be divided up or where this is more difficult with things such as the ocean or peace and security, exclusion can generally not be realized. Here, "anyone can derive benefits from the good so long as nature or the efforts of others supply it" (ibid.). Joint-ness of use, on the other hand, implies that more than one person can consume a good simultaneously. Typical examples of such a good are a movie theater or a lighthouse. Goods that generally do not enable joint consumption are, for example, an apple or a fish. These goods are considered rival. If one person eats the fish, another person cannot eat it. Such goods are subtractive and therefore considered to be scarce and rival. These distinguishing characteristics of exclusion and joint-ness of use have led the Ostroms and other intellectuals of the public choice theory to differentiate between individual private goods, collective private goods or club goods, common pool resources and public goods. The following table portrays the four types of goods:

	Rival	Non-rival/Joint Use
Exclusion Feasible	<u>Private Goods</u> : Bread, shoes, automobiles, haircuts, books, etc.	<u>Toll Goods</u> : Theaters, night clubs, telephone service, toll roads, cable TV, electric power, library, etc.
Exclusion difficult/infeasible	<u>Common-Pool Resources</u> : Water pumped from a ground-water basin, fish taken from an ocean, crude oil extracted from an oil pool	<u>Public Goods</u> : Peace and security of a community, national defense, mosquito abatement, air pollution control, fire protection, streets, weather forecasts, public TV, etc.

Table 1: Types of goods (Ostrom and Ostrom 1999, 78)

Here, it is important to note that common pool resources are similar to public goods because it is somewhat difficult (i.e. costly) in both cases to exclude others from their use. Yet, in contrast to public goods, common pool resources can provide individuals with goods that can be consumed individually (e.g. a fish from an ocean).<sup>20</sup> In a similar

<sup>20</sup> In order to explain the concept of common pool resources in a bit more detail, I quote a longer passage by Elinor and Vincent Ostrom here: "In the case of a common-pool resource, exclusion may be infeasible in the sense that many users cannot be denied access. But, use by any one user precludes use of some fixed quantity of a good by other users. Each pumper in a groundwater basin, for example, makes a use of water that is alternative to its use by each other pumper. Each fish or ton of fish taken by any one fisherman prevents any other fisherman from taking those same fish. Yet no basis exists



manner, individual private goods can be distinguished from collective private or toll goods in that both types of goods enable exclusion while the former good is a rival good and the latter is at least principally non-rival.

Although this schematic categorization of goods is helpful in differentiating between types of goods, Vincent Ostrom emphasizes that it is somewhat problematic in a few respects. Firstly, few if any goods perfectly fit this categorization except for a few trivial and ideal cases such as gravity (V. Ostrom 1975, 847). In a similar sense, the possibility of joint consumption depends on the precise conditions of use. A public highway can, for example, become rival and a public “bad” when over-used. Additionally, the schematic representation of goods fails to recognize that the differences between goods lie on a continuum. And lastly, the relationships between diverse types of goods are neglected (i.e. the relationship between automobiles and the public highway). Vincent therefore explains that “[w]ithin this continuum, the production or consumption of goods or services may involve *spillover effects* or *externalities*” (V. Ostrom 2011a, 190; emphasis i.o.). In other words, the use of one type of good will most likely have positive or negative effects on other goods due to their interdependence (e.g. the positive effects of education on a broader population and the negative effects of pollution on water quality). The interrelatedness of different types of goods therefore demands different access and utilization rules depending on the positive and negative effects of these goods. Also, these access and utilization rules are not merely given but highly contested.

Nevertheless, it must be noted that this framework simply assumes that specific types of goods inherently or “naturally” possess certain characteristics, which, in turn, makes them more adequate to be dealt with as private, club, common or public goods. But as Elinor Ostrom and Charlotte Hess argue, “Common pool resources may be owned by national, regional, or local governments; by communal groups; by private individuals or corporations; or used as open access resources by whomever can gain access” (Ostrom and Hess 2007, 9). Ostrom and Hess emphasize, therefore, that “there is no automatic association of common-pool resources with common property regimes – *or, with any other particular type of property regime*” (ibid., 10; emphasis i.o.). In other words, it can be assumed, at least theoretically, that all goods could be privatized if purchasing power

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for excluding fishermen from access to fish in an ocean. Once appropriated from a natural supply, water can be dealt with as a toll good to be supplied to those who have access to a distribution system; similarly, once taken from the ocean, fish can be dealt with as a private good” (Ostrom and Ostrom 1999, 78).

and the demand of a good increases while new technologies would decrease the costs of exclusion (Engel 2002, 52, Euler 2018). Just as it might have been absurd to imagine that water would be bottled and consumed by the masses a few centuries ago, it could be just as possible that fresh air will be bottled and sold one day. We can thus conclude with Tyler Cowen that the “costliness of exclusion is not a function of the nature of the good [itself]” (Cowen 1985, 61). Or, in more general terms, “nearly every good can be classified as either public or private depending upon the institutional framework surrounding the good and the conditions of the good’s production” (ibid., 53). For this reason, it is necessary to investigate whether the Ostroms provide us with arguments for or against organizing specific resources in private or common property arrangements.

#### **4.3.2. Market Failure and Privatization**

It is important to emphasize that both Elinor and Vincent do not understand the tragedy of the commons to be the result of a common pool resource itself or of a common property regime, but rather, they understand tragedy to be the consequence of specific institutional arrangements that enable people to act in a specific manner in relation to specific goods. In this sense, the unhindered individualistic freedom that Garrett Hardin describes in his model is not to be understood as a type of freedom in a state of nature, but rather as freedom that has been created through a public good of the legal framework (V. Ostrom 1993, 62, V. Ostrom 1999b, 62). More specifically, it is a legal framework that protects specific property and contract rights from arbitrary interference and that allows the unimpeded and unlimited accumulation of resources. In Elinor’s words, “The Hobbesian state of nature is logically equivalent to a situation in which rules exist permitting anyone to take any and all desired actions, regardless of the effects on others” (E. Ostrom 2008a, 140). According to Vincent, this type of individualistic freedom and choice is not simply a characteristic of open-access common pool resources, but also a characteristic of the market (V. Ostrom 1974, 56). Furthermore, it is this individualistic choice that leads to aforementioned spillover effects and externality problems. Vincent explains:

“When individuals act with the legal independence characteristic of decision making in market structures in a situation dominated by externalities, common-pool resources, or public goods, we can conclude that *institutional weakness* or *institutional failure* will occur. The magnitude of the weakness or failure will depend upon the importance of the externality, or the degree of indivisibility

occurring in the common property or public good” (V. Ostrom 2011a, 193; emphasis i.o.).

Here, tragedy arises when individual freedom in the market affects other goods and third parties in the form of negative externalities, free-riding or unlimited appropriation of common pool resources or public goods. Vincent refers to this problem as a form of “institutional weakness or failure” that could be interpreted as what is generally understood to be market failure. Elinor Ostrom, in turn, defines market failure in a similar yet slightly different manner:

“Market failure means that the incentives facing individuals in a situation, where the rules are those of a competitive market but the goods do not have the characteristics of ‘private goods,’ are insufficient to motivate individuals to produce, allocate, and consume these goods at an optimal level” (E. Ostrom 2005a, 23).

Although the acknowledgement of the problem of market failure is quite widespread, it should not be interpreted as a critique of privatization and markets but rather, as Vincent does here, as the “failure” of certain goods to be divided up and privatized. As Elizabeth Anderson remarks correctly, “The theory of market failure is not a theory of what is wrong with markets, but of what goes wrong when markets are not available: it is a theory of what goes wrong when goods are not commodified” (Anderson 1993, 192). The point is that the problem of externalities is often understood as an institutional weakness of common pool resources and public goods – and not as a problem of private goods and markets. This is a very prevalent argument that is especially brought up in relation to environmental problems such as pollution.<sup>21</sup> For example, Arrow and Hahn argue in their book *General Competitive Analysis* (Arrow and Hahn 1971, 186) that a “competitive equilibrium” in allocation – and thus where no market failure – exists when *everything* is clearly defined and delineated as privatized commodities.<sup>22</sup> This

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<sup>21</sup> Here is merely one example: “There is good reason, however, to believe that a genuinely free market economy would actually minimise negative externalities. A free market is not a free-for-all, but a system of private property rights enforced by law. Negative externalities without the possibility of amelioration can only arise where private property rights do not (or cannot) exist. [...] While there may be some externalities that cannot be made good via the enforcement of private property rights (principally because private property rights cannot be created or enforced), the presence of negative externalities should properly lead to an investigation to see how private property rights can be further extended, rather than an abandonment of the free market system” (Meadowcroft 2004).

<sup>22</sup> Arrow and Hahn write: “The implications of these conclusions [...] suggest that under appropriate hypotheses, especially convexity and the presence of all markets (*absence of externalities*), competitive equilibrium is very sturdy. There is no strong incentive for subgroups to try to coalesce and to achieve more than they could in the competitive equilibrium; for any such attempt would be unstable. This is contrary to the view sometimes expressed that competitive equilibrium has an inherent instability in that it would pay, for example, the owners of some one commodity to form a cartel

assumption is far-reaching and would imply the commodification of all things including not only common-pool resources such as air, water, forests, pastures and ecosystems, but also “things” like love, sex, taking care of one’s own children and, theoretically, also law, police protection and the state.

To be clear, it would be completely wrong to argue that Elinor and Vincent Ostrom defend this position. They worked throughout their lives to develop a better understanding of how commons and common property arrangements can be democratically governed. But the question arises whether the Ostroms provide arguments against this demand to privatize all of life. Generally, their only reasons against privatization are the ones that result from their previously mentioned categorization of goods. In her book *Governing the Commons* originally published in 1990, Elinor shortly discusses privatization. Here, she basically argues that privatization is undesirable because it increases the costs of property protection, monitoring and sanctioning (E. Ostrom 2008a, 12). She writes, “[T]he setup costs for a new market or a new insurance scheme would be substantial and will not be needed so long as the herders share fodder and risk by jointly sharing a larger grazing area” (ibid., 13). According to Elinor, an increase in costs makes it unlikely that shared land will be privatized. Furthermore, common pool resources such as pastures are supposedly somewhat difficult to (fairly) parcel up because of the highly unequal structure of the landscape. According to Ostrom, this would make privatization undesirable. In the case of fisheries, Elinor also argues that the unstable movement of fish make it “likely” that fisheries would “be owned in common rather than individually” (ibid., 13). However, these arguments against privatization are simply based on monetary utility and the functional description of goods. As we can see, we may search in vain for robust normative arguments against privatization in the work of the Ostroms.

In this sense, a more fundamental question that arises now is not only if privatization is possible (i.e. costly), but whether it is desirable. What is neglected is the simple insight that privatization and commodification fundamentally transform people’s relationships with each other and the world (e.g. paid sex versus unpaid sex between people), but that they also exclude people from vital resources for their life and liberty (i.e. water, land, housing etc.). For example, by enabling someone to appropriate and accumulate land

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and exploit their monopoly power” (Arrow and Hahn 1971, 186; emphasis added).

without limit, other people will be excluded from the possibility to access land. I believe this to be the main, simple and general argument *against* privatization. The position that I defend in this work and that I will elaborate on in more detail later is that people require access to common resources as a prerequisite for life and liberty. While individual private property might be necessary for the fulfillment of certain personal needs, an access to democratically managed common property provides people with greater individual freedom in joint activities while simultaneously minimizing their ecological impact. Put somewhat differently, commons thus increase our autonomy, which we defined as the ability to co-determine our social conditions, and simultaneously provide us with a democratic means to create abundance through the fairer distribution of goods in a world of limited resources. In turn, I believe this to be the main argument *for* a commons-based society. Elinor and Vincent Ostrom's work strikingly lacks such a critique of privatization and a clear normative defense of commons. As previously mentioned, it would be false to argue that Elinor or Vincent Ostrom defend privatization; but with his scant and somewhat misleading critique of market failure, the door is left wide open to privatization.<sup>23</sup> As we can see, this is a large and serious gap in Elinor and Vincent's work on commons. In order to be fair, we could say that as political scientists, it was not their job to provide a normative defense of commons – they simply provided the examples that commons can be democratically and sustainably managed.

### 4.3.3. The Tragedy of the Market

That being said, Elinor Ostrom actually does provide another rather slender but insightful critique of markets that will help us in our general analysis of the relationships between markets, democracy and commons.

In *Governing the Commons*, Elinor does, in fact, note that privatization will transform the relationship that one has with nature. After privatization, she explains, “each herder will be playing a *game against nature* in a smaller terrain, rather than a game against another player in a larger terrain” (E. Ostrom 2008a, 12; emphasis i.o.). She then declares that the reason for this “game against nature” is a “result of [one's; LP] own profit incentive”

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<sup>23</sup> For a (neo)liberal market-oriented (re)interpretation of Elinor Ostrom's work see, for example, Mark Pennington's *Elinor Ostrom, common-pool resources and the classical liberal tradition* (2012).

(ibid., 13). Here, we are confronted with a certain contradiction in property theory. On the one hand, it is often assumed that privatization leads to a more responsible and sustainable management of a specific resource due to the correlation between costs and benefits. On the other hand, it is also assumed that people will use their resources more usefully or, rather, more productively and profitably. We will discuss this argument in further detail when we discuss John Locke's legitimization of private property. For now, however, it is interesting to note that Elinor appears to claim that sustainability and profit contradict each other and that the problems of overuse and degradation remain present even if the specific resource is privately owned.

On the one hand, we might think that this overuse occurs because people are inherently greedy and short-sighted. This would support the thesis that if people are able to pursue their egotistical interests, they will then seek profits and exploit the resources that sustain their own existence. If this were the case, we could justify a power "from without" that protects people from their own destructive drives. As we will see, however, this is not the case that Elinor is defending. On the other hand, it could just as easily be assumed that people manage privately owned resources sustainably in their own long-term self-interests. This could occur when people are relatively informed about the effects of their actions. Why, then, would people nevertheless overuse their privately-owned resources? The reason becomes more apparent when we perceive individuals in their broader social context. In her article *Toward a Behavioral Theory Linking Trust, Reciprocity, and Reputation* (2003), Elinor explains that when privatization is coupled with open and competitive markets, tragedy is simply repeated at a higher level. She explains: "In highly structured and competitive environments such as an open market [...] entrepreneurs have *no alternative* other than to seek profits. Those who do not pick maximization strategies [...] are *eliminated* by the selective forces of the market" (E. Ostrom 2003, 25: emphasis added). Similarly to Hardin's portrayal of the tragedy of unregulated commons, she argues that the open-market arrangement transforms individuals into "determinate, calculating machine[s]" (ibid.) that are caught up in a single-exit or straitjacket situation (ibid.). In order to survive, private property in open competitive markets thus force people to increasingly extract and accumulate resources – irrespective whether these resources are owned privately or collectively. Aside from these and other fleeting references to the problems of "rent seeking" (E. Ostrom and Hess 2007, 5), "roving bandits" (E. Ostrom 2007, 12) or even "robber

barons” (V. Ostrom 2008c, 244), I am not aware of any other critical reflections on privatization and markets in the work of Elinor or Vincent Ostrom.

Before continuing, I think it is important to pause for a moment and reflect on this insight of Elinor’s in order to develop my own more elaborate critique of markets here. As we see, competitive and maximizing arrangements as described by Elinor are very similar to those described by Adam Smith in which markets discipline people to increase the “wealth of nations”. Firstly, it must be noted that unregulated commons enables the unlimited appropriation and accumulation of resources. Yet, in contrast to Adam Smith’s positive portrayal of wealth generation, we are reminded again that the discipline of open and competitive markets greatly limits and undermines the individual and collective freedom to alter one’s social arrangements. Furthermore, in discussing the tragedy of unregulated commons, we have ironically discovered that open and competitive markets function according to the same paradoxical logic as unregulated, open-access commons: One’s existence is secured through the necessity to appropriate more and more resource units from a specific resource system, irrespective whether the resource system is held in common or treated as individual private property. Both arrangements function according to the logic of “survival through accumulation”. While Adam Smith positively describes this process as an increase in economic growth and individual monetary wealth, the perspective of commons conceptualizes the same social arrangement as a tragedy that depletes and overuses people’s common resources.

Yet, in contrast to Elinor, I would argue that privatization does not replace the “game against another player” with a “game against nature” (E. Ostrom 2008a, 12). Instead, antagonistic and competitive relationships exist in both social arrangements. The reason for this is that both the unregulated commons and the open market are structured according to the prisoner’s dilemma or what is also known in economic terminology as the isolation paradox (Sen 1984, 123-4, Elson 1988, 13-20). In both, there exists an institutional setting in which individuals must act *ex post* without prior communication and knowledge of the intentions and actions of the other person. This is what Frank Knight and other economists call “uncertainty” in market situations (Knight 1921). The problem, however, goes beyond the difficulty of merely dealing with unforeseen events such as rainfall or strong wind. As we know, the uncertainty of the prisoner’s dilemma leads to maximization strategies and the depletion of resources – irrespective whether



these are held in common or owned privately. Hence, the privatization of all goods and resources will not be able to overcome ecological problems, because competitive markets also force one to extract more and more resources from one's own individual private property, ultimately depleting these resources too. A pertinent example of this is burnout, which can be interpreted as a type of depletion of one's resources in oneself in order to keep up with the other market participants (Rosa 2010). As we see, survival through perpetual accumulation in a world of finite resources is not only logically impossible, but also socio-ecologically self-destructive.

Interestingly, this dynamic not only undermines the resources that are privatized and transformed into profit but also destabilizes the market itself. Due to the diversity of people's capabilities and their unequal starting positions, accumulation processes are also highly unequal. Simply put, people with better starting positions can, in turn, accumulate even more at a greater rate. This cumulative advantage is often understood as the Matthew principle.<sup>24</sup> This implies that the ensuing race to the bottom – or to the top, depending on one's perspective – increases scarcity even more for those who have less. Obviously, this dynamic accentuates the divergence between the haves and have-nots. Then, those without purchasing power become limited in their possibilities to buy products that are being sold on the market. This is, however, not only problematic for their own access to resources, but also for those producing the goods, for if the products are not bought, wages cannot be paid and people lose jobs. The socio-economic inequality that results from such a divergence thus leads to what is generally known as an economic crisis due to a demand deficit (Keynes) and overaccumulation (Marx). According to this rather simple logic, open and competitive markets lead to economic instability and the devastation of livelihoods. Put somewhat differently, we could even say that the dynamic of the open and competitive market undermines the commons of the market economy.

Both the ecological devastation and the economic instability would not necessarily be a problem, if people could solve these problems that result from the open and competitive market. But as we already know, the open and competitive market creates “structural constraints” (Cohen 1989, 28) or a “straitjacket situation” (E. Ostrom 2003, 25), which

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<sup>24</sup> As Streeck quotes in his book *Buying Time*: “For to all those who have, more will be given, and they will have in abundance; but from those who have nothing, even what they have will be taken away” (Matt. 25,29 in Streeck 2013, 94; transl. by P. Camiller).



impedes people from altering their social institutions. We already have discussed this in relation to the tension between the *Staatsvolk* and the *Marktvolk*. This problem is, however, augmented with the maximization dynamic of the competitive market. If one producer increases its rate of production, all must follow suit in order to maintain their competitive edge. Thus, in order to survive on the market, agents must not only increase the *amount* of appropriation and output, but also the *rate* thereof. This is normally understood as efficiency gains through rationalization processes and is one of the main justifications of a competitive market economy. The sociologist Hartmut Rosa describes this process as one of perpetual social acceleration, that might increase economic output, yet does not necessarily increase one's freedom and wellbeing (Rosa 2013). Importantly, this increased socio-economic acceleration also conflicts with the processes of democratic deliberation and governance. As he explains,

“[T]he central specifically temporal difficulty of democratic politics proves to be the fact that a participatory and deliberative will formation that includes a broad democratic public is capable of being accelerated only to a very limited extent and under specific social conditions. The aggregation and articulation of collective interests and their implementation in democratic decision making has been and remains time intensive. For this reason democratic politics is very much exposed to the danger of desynchronization in the face of more acceleratable social and economic developments” (Rosa 2013, 254).

We can thus understand this desynchronization as a falling apart of the high speed of socio-economic processes and the time necessary for democratic practices. This incongruence leads to a time lag of political action behind economic developments. Importantly, this implies that “politics loses its role as an influential actor that shapes the playing field itself and takes on the status of a predominantly *reactive* fellow player of the game” (ibid., 264; emphasis i.o.). Here, democratic politics is again dethroned, yet not by economist kings or a *Marktvolk*, but rather by the maximization dynamics of the market itself. Similar to the previously discussed structural constraints, this necessity to perpetually accelerate can thus also be understood as “objective forces” (ibid., 269) that limit political deliberation and action. Again we are confronted with a mechanism of the open and competitive market that thwarts people from collectively solving the problems that the market institutions themselves bring about.

As we see, the isolation paradox that underlies open and competitive markets brings about diverse problems and mechanisms that limit democratic change and institutional problem solving. As Amartya Sen explains: “The market mechanism on its own confines

its attention only to issues of congruence, leaving the interest conflicts [and problems; LP] unaddressed” (Sen 1984, 95).<sup>25</sup> Along those lines, I would argue that by neglecting or suppressing conflicts through individual private property, market exchange, competition and the belief in perpetual accumulation and economic growth, conflicts and tragedies will inevitably erupt elsewhere. As we have just discussed, these tragedies can be economic degradation, pollution and climate change, local and global social inequalities and economic crises. Here, I would agree with James Tully who understands these injustices with what he calls the Medea Hypothesis, “that is, like Medea killing her own children, humanity’s current way of life is bringing about the destruction of the life conditions of future generations” (Tully 2013a, 3). On top of this, the democratic deficit resulting from a state-market dichotomy hinders people from institutionally dealing with these antagonistic interests and grave socio-ecological problems. In turn, this is what Tully coins “the tragedy of privatization” and what I would also understand as the tragedy of open and competitive markets (Tully 2013b, 227, 2014, 86). The underlying prisoner’s dilemma of both the unregulated commons and the open and competitive market underlines Charles Lindblom’s notion of the market as a prison, in which in which each person is “locked into” (Hardin 1968, 1244, Lindblom 1982). Paraphrasing Hardin, we may conclude that in an open and competitive market, each man is locked into a system that compels him to increase his wealth without limit – in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the self-regulating market. Unhindered individual freedom in an open and competitive market brings ruin to all. Returning to Elinor Ostrom, we therefore might conclude that although she recognized the underlying straitjacket maximization logic of the open and competitive market, it appears that she did not follow through with a reflection on the consequences thereof.

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<sup>25</sup> Hayek admits that markets do not actually deal with these conflicting values, but that they instead only provide a method for agreeing on the means to obtain diverse and conflicting ends. Hayek writes “Among the members of a Great Society who mostly do not know each other, there will exist *no agreement on the relative importance of their respective ends*. There would exist not harmony but *open conflict of interests* if agreement were necessary as to which particular interests should be given preference over others. What makes agreement and peace in such a society possible is that the individuals are not required to agree on ends but only on means which are capable of serving a great variety of purposes and which each hopes will assist him in the pursuit of his own purposes.” (Hayek 2013, 171-2; emphasis added). Although it might appear that people would not agree on final ends in an open, competitive market, I would argue that the final notion that people in capitalist societies must (tacitly) agree on is perpetual and exponential economic growth as a means to deal with the fact that they do not agree on other final notions. Ignoring planetary boundaries, endless growth provides the hope that one day all people will be able to realize their desired ends. Instead of dealing with conflicting values, people have in an open and competitive market thus agreed on economic growth as a social end in itself.

In order to avoid being misunderstood, I would again like to mention that this rather harsh critique of markets is not a critique of markets per se, but rather of open or rather unregulated, competitive market arrangements. Nevertheless, some may say that this is a highly exaggerated and negative portrayal of markets. To a certain extent, I would agree with that critique. Fortunately, not all markets function in this manner, as the regulations of labor markets and subsidies for farming in France and Switzerland respectively prove. It could even be said that the markets of all goods and services are regulated in some form or another. In this sense, open and competitive markets have been portrayed in an abstract and idealized manner. Nevertheless, the mechanisms behind existing “imperfect” markets still often function according to the dynamics that were just described. Furthermore, the problem that many people – especially in northern Western countries and especially people in upper social strata – are faced with is that the world does not appear to be as bad as I have just described it to be. Under this assumption, we could begin a discussion about whether the glass is half full or half empty. That, however, would be missing the point. The problem is that many of these issues discussed are not perceived directly but usually occur somewhere else, be that in poor neighborhoods that one does not live or in the global South that is hit harder than the North by austerity policies and climate change. More to the point, the positive and negative effects of these maximization strategies are distributed unevenly and unequally throughout a society and between societies. Thus, while some of us may not experience these problems in our day-to-day life, I would nevertheless affirm that the structural logic that lies behind these diverse socio-economic, ecological and political problems is largely due to the institutional arrangements based on privatization and open and competitive markets.

That being said, I believe that we can now return to the work of the Ostroms and see if we find some answers to the tragedies of both the hierarchical monocentric order and privatization.

#### **4.4. Overcoming Tragedy through Collective Action**

In order to conceptualize alternative forms of societal organization, Elinor Ostrom turns to the analysis and reflection of a central assumption of both Garret Hardin’s thesis and economic theory in general: That humans are rational, egotistical utility maximizers.

Although she questions the universality of complete rationality and rational choice theory, Ostrom insists that she does not present a new, alternative model, but that she merely formulates diverse attributes of human behavior that should be included in the consideration of future efforts to formalize specific models of agency (Ostrom 2003, 54, 62).

#### **4.4.1. A Behaviorist Theory of Bounded Rationality and Norm-Oriented Agents**

As mentioned above, the tragedy of the commons is based on the prisoner's dilemma, in which agents are conceptualized according to a utilitarian model of complete rationality. The assumptions for such games are that (1) all participants have knowledge of the structure and possible outcomes, (2) the strategies are decided upon independently, and (3) there is no external authority to enforce agreements (ibid., 23). Elinor lists some reasons for the peculiarity of this model: "no communication among the participants, no previous ties among them, no anticipation of future actions, and no capacity to promise, threaten, cajole, or retaliate" (E. Ostrom 1986, 10). Most importantly, the "only 'choice' available to rational human beings [in this situation is; LP] a 'choice' *within* the constraints of an externally imposed structure" (ibid., 11, emphasis i.o.). Because people can supposedly only choose within these specific institutional arrangements, individuals are encouraged or forced to act as if they were "naturally" egotistical utility maximizers. It is in this sense that Elinor denaturalizes both unregulated, open-access common property regimes and, in passing, the open competitive market. In contrast, she understands both the models of the completely rational agent and of the paradigm of the prisoner's dilemma situation to merely be "one model within a family of models [...] [that exists; LP] in highly structured physical and institutional settings" (ibid., 25).

Elinor Ostrom is able to relativize and reformulate the currently dominant rational-choice theory due to her extensive analysis of vast amounts of empirical research both in the laboratory and in the field. Without going into too much detail about the laboratory experiments, it can generally be said that much evidence contradicts the theoretical predictions of dilemmas and Nash-equilibria (E. Ostrom 2003, 24, 27-37). The most important findings made in the laboratory are (1) the initially high yet suboptimal levels of cooperation in most social dilemma games, (2) the positive effect of communication on cooperation and (3) the willingness to invest in solving second-order dilemmas or, rather, in changing the structure of the game itself in order to improve joint benefits

(ibid.). Despite these results, Ostrom remarks that diverse contextual variables (such as length of game, communication and sanctioning possibilities etc.) produce stark variations in levels of cooperation, which remains as the “really big puzzle in the social sciences” (ibid., 39). In this sense, it could be said that the variance in laboratory settings and game outcomes has led Elinor Ostrom to broaden the scope of classical methodological individualism by emphasizing the importance of the context for individual agency and collective action.<sup>26</sup>

It is this variety in the empirical results that has enabled Ostrom to attempt to formulate a behavioral theory of bounded rationality that brings together the constraints of specific contexts and the cognitive limitations of agents. In comparison to the “thin” theory of complete rationality in which humans are “self-interested, short-term maximizers” (E. Ostrom 1998, 2), Ostrom develops a broader, “second-generation” (ibid., 9) model of bounded or incomplete rationality.

“I assume that [humans; LP] seek to improve values of importance to them (including what happens to other individuals who are of concern to them); select actions within interdependent situations in which what they do is affected by their expectations of what others will do; use information about the situation and about the characteristics of others to make decisions; and try to do as well as they can given the constraints they face. In addition, I assume that in the course of their lifetimes individuals learn heuristics, strategies, norms, rules, and how to craft rules” (E. Ostrom 2003, 39-40).

Remaining within a general utilitarian framework, Elinor Ostrom appears to understand human rationality as a means to an end, as an instrument to attain certain preferences (E. Ostrom 1998, 9). In contrast to a classical rationalist model, however, Ostrom does not assume the (short-term) maximization of interests but hypothesizes that people merely desire to improve the things they value. This teleological movement could be understood as a form of meliorism which is common in pragmatist thought (Koopman 2006). Although Ostrom’s use of the term “value” is under-defined here, considering her critique of a purely economic or monetary understanding of value, it is plausible that her

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<sup>26</sup> Ostrom writes: “The models of social dilemmas used in laboratory experiments appear to be quite robust. Researchers are able to create and replicate situations in which there is no cooperation, very high levels of cooperation, or moderate levels of cooperation. The amount of control that can be exercised indicates that the experimental models of dilemma situations are quite good. *The model of the individual actor used to explain outcomes appears to be the source of the problem*” (E. Ostrom 2003, 39; emphasis added).

– and Vincent’s – understanding of value is plural, conflicting and contingent (Dietz et al. 2003, 1909, V. Ostrom 1984).

This model of bounded rationality importantly emphasizes that the definition and pursuit of these values is embedded in and constrained through the general material and social context. Having been influenced by Herbert Simon, Elinor understands the rationality of an agent to be limited by available resources (such as time and information) that enable people to attain specific ends (Wall 2014, 41-3). Furthermore, she argues that diverse empirical examples demonstrate that humans learn and utilize diverse heuristics, norms and rules to simplify this cognitive process of information analysis, evaluation and transmission. According to Elinor, instrumental heuristics or “rules of thumb” are created and refined by individuals in repetitive situations to optimize outcomes. Norms are, however, used as positive and negative “internal valuations [...] that an individual attaches to a particular type of action” (E. Ostrom 2003, 40). Norms are generally learned through socialization and are affected by diverse situational variables (ibid., 49). Ostrom understands these internal values as a scale or “delta parameter” (ibid.) that can weigh diverging and conflicting external end values against each other. Although norms are often associated with positive values such as sharing and caring, Ostrom conceptualizes the term more neutrally as an individual orientation system or societal “focal points” (ibid., 40) that are created through past experiences and the expected actions of others. She explains,

“After experiencing repeated benefits from other people’s cooperative actions, an individual may resolve always to initiate cooperation in the future. Alternatively, after many experiences of being the ‘sucker’ in such situations, an individual may resolve never to initiate unilateral cooperation and to punish noncooperators whenever feasible” (ibid., 40-41).

As Elinor emphasizes, norms, preferences and values can be changed throughout one’s life in order to react to specific experiences (E. Ostrom 1998, 9). In comparison to unconscious heuristics and internalized tacit norms, rules tend to be self-consciously developed “shared understandings that certain actions in particular situations must, must not, or may be undertaken” (ibid., 10). It is in this sense that Ostrom understands rationality as being bound, where the choices of means and ends that an agent makes are rarely based on complete knowledge and abstract, absolute principles. Instead, they are constrained by the limited resources available and strongly influenced by implicit

and explicit orientation systems created through human interactions. By including both situational constraints and societal norms and rules, Elinor Ostrom fundamentally transforms the concept of methodological individualism into a non-essentialist and contingent<sup>27</sup> model of human agency that is embedded in a social reality of “communicative action” (Habermas 1981).

#### **4.4.2. The Importance of Reciprocity, Trust and Reputations**

Despite this important revision of the theory of human agency, its implications for the overcoming of social dilemmas must be discussed now. To understand the possibilities of creating social conditions for overcoming social dilemmas, Elinor Ostrom turns to norms of cooperation and reciprocity. According to Ostrom, “Reciprocity is viewed by sociologists, social psychologists, and philosophers as one of the basic norms taught in all societies” (E. Ostrom 2003, 42). From an evolutionary perspective, reciprocity enhances one’s “fitness” by promoting better outcomes and has been utilized as a strategy to overcome social dilemmas long before mutual obligations could be enforced by external authorities (E. Ostrom 1998, 10). For this reason, it could even be said that reciprocity has the tendency to be people’s dominant norm or default position. This hypothesis is supported by numerous laboratory experiments in which people use reciprocity norms in one-shot, no-communication games and other short-term experimental environments (E. Ostrom 2003, 47-9).<sup>28</sup> Despite this general tendency, Ostrom emphasizes that reciprocity is not biologically inherited. Instead,

“[i]ndividuals inherit a capacity to learn and value algorithms that enhance their capacity to increase their own long-term benefits when confronting multiple social-dilemma situations with others who have learned and value similar norms, even though each situation involves different people, payoffs, and levels of uncertainty” (ibid., 44).

We will discuss the question of reciprocity and human nature in more detail later, but for the time being, it is important to emphasize that because reciprocity is learnt

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<sup>27</sup> The contingency of human agency basically implies that the actions of human beings are neither completely predetermined because chance, spontaneity and imagination open the possibilities of change, nor are they completely free, because actions are always dependent on specific conditions.

<sup>28</sup> A famous laboratory game that demonstrates this tendency to use reciprocity is the ultimatum game (E. Ostrom 2003, 47-9). In reference to other experiments, Ostrom writes: “[T]he evidence from experiments shows that a substantial proportion of the population drawn on by social science experiments (primarily college students in major universities in the United States, Europe, and Japan) – ranging from 50 to 60 percent – do have sufficient trust that others are reciprocators to cooperate with them even in one-shot, no-communication experiments” (ibid., 49).



through processes of socialization, individuals can develop diverse strategies to deal with different social dilemmas. While some people learn strategies of reciprocity to overcome these problems in a variety of situations, others learn norms of behavior that are less “nice” (ibid.). This can include either individual or group egotistical behavior. In this sense, reciprocity norms can also have a dark side. In reference to this problematic finding, Ostrom argues:

“Tight circles of individuals who trust one another [and cooperate; LP] may discriminate against others of a different color, religion, or ethnicity to keep them from access to productive opportunities. The focus on the return of favors for favors can also be the foundation of corrupt practices whereby those in official positions do favors for wealthy friends who then return the favors with various forms of financial enrichments” (ibid.: 45).

For this reason, reciprocity norms and practices that are inclusive and that support basic moral standards must be differentiated from those that are highly exclusive, restrictive and repressive (ibid.).

According to Elinor Ostrom, central endogenous variables in human interactions that enable and strengthen reciprocal interactions are those of trust and reputation. She defines trust as “the expectation of one person about the actions of others that affects the first person’s choice, when an action must be taken before the actions of the others are known” (E. Ostrom 1998, 12). The existing level of trust is therefore central in determining the first action in a social dilemma because it “affects whether an individual is willing to initiate cooperation in the expectation that it will be reciprocated” (ibid.). The hope or expectation that one’s cooperation will be returned is not based on naïve altruism but rather on one’s own previous experiences and social norms, on the one hand, and on the reputation of the other person, on the other. Reputations are, in turn, important for trust and reciprocity because they give information about an individual’s history of overcoming social dilemmas. Or, in other words, reputations tell other people whether someone has been “keeping promises and performing actions with short-term costs but long-term benefits” (E. Ostrom 2003, 43). This, in turn, enables people to “estimate of the risk of extending trust [to the other person; LP], given the structure of the particular situation” (ibid., 49). A good reputation makes a person trustworthy,



implicating that one can expect that they will reciprocate cooperative behavior in the future.

For this reason, Elinor Ostrom places the relationship between reciprocity, trust and reputation at the center of her understanding of how bounded rational agents overcome social dilemmas: “[A]t the core of a behavioral explanation are the links between the trust that an individual has in others, the investment others make in trustworthy reputations, and the probability of using reciprocity norms” (E. Ostrom 2003, 49-50). If cultivated, trust, reputations and reciprocity are “valuable assets” (E. Ostrom 1998, 12) that can create a “mutually reinforcing core” (E. Ostrom 2003, 50) and transform Hardin’s negative vicious cycle of tragedy into a virtuous cycle of improved joint outcomes, ultimately increasing one’s evolutionary (ibid., E. Ostrom 1998, 12). These insights into the mechanisms of reciprocity, trust and reputation to overcome social dilemmas are fundamental in Elinor Ostrom’s theoretical development of an alternative to market or state policy prescriptions that are grounded in micro-situational everyday experiences.

#### **4.5. Self-Governing Commons with the Aid of Eight Design Principles**

Despite these positive impacts on peoples’ capabilities to cooperate and trust one another, it must be emphasized that Elinor Ostrom’s research also reveals the contingency and fragility of these norms and behavioral patterns. For this reason, she shifts her focus from such endogenous variables to exogenous, contextual variables in order to understand how social conditions can strengthen these norms and enhance the possibilities of overcoming social dilemmas. By analyzing the effect of institutional structures on human interactions, it can be said that first-order dilemmas of reciprocity, trust and reputation are then transformed into second- and third-order public good dilemmas of institutional supply, credible commitment and mutual monitoring (E. Ostrom 2008a, 41-5). Similarly to her findings on trust and reciprocity, while the classical theory of fully rational agents predicts that rule making will not occur because everyone will default to free-riding,<sup>29</sup> Ostrom’s meta-analysis of numerous laboratory

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<sup>29</sup> On the problem of second-level dilemmas, Ostrom writes, “Spending time and effort designing rules creates a public good for all involved and is thus a second-level dilemma no more likely to be solved than the original dilemma. This is the foundation for the repeated recommendation that rules must be imposed by external authorities who are also responsible for monitoring and enforcing these rules” (E. Ostrom 1999a, 506).

and field experiments has discovered that people are actually often willing to invest time and energy into changing rules and institutions to improve joint outcomes.

Before analyzing and discussing these exogenous factors in detail, it should be mentioned that one specific variable can be considered fundamental for overcoming social dilemmas on all levels of interactions: The possibility of communicating with one another. Although no single variable automatically produces reciprocity norms, face-to-face communication is central for cultivating cooperation and creating institutions. In contrast to the situations of non-communication in Hardin's unregulated commons and the prisoners' dilemma, Elinor Ostrom explains:

“With a chance to see and talk with others repeatedly, a participant can assess whether he or she trusts others sufficiently to try to reach a simple contingent agreement regarding the level of joint effort and its allocation. Communication thus allows individuals to increase (or decrease) their trust in the reliability of others” (E. Ostrom 2003, 51).

Face-to-face communication not only enables people to access more information about other participants, but it also enables people to make promises and create agreements in relation to future actions. Furthermore, communication can reinforce prior normative values and facilitate the development of a group identity, which also generally increases mutual trust (ibid., 33). Thus, the possibility of face-to-face communication must be understood as a key variable in dealing with social dilemmas on different but interrelated levels of action.

Despite this emphasis on the importance of communication for creating robust<sup>30</sup> institutions, communication per se does not solve the problems of supply, commitment and monitoring. In order to understand how these difficulties can be dealt with through communication and rule creation, we must now turn to Elinor Ostrom's eight design principles for long-enduring institution.<sup>31</sup> Beginning with the importance of

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<sup>30</sup> The term robust is introduced here because it is a central term for the type of institutions Ostrom intends to help develop. She explains what is normally meant by robust: “[Kenneth] Shepsle considered a system to be robust if it was long-lasting and the operational rules had been devised and modified over time according to a set of collective-choice rules (which themselves might be modified more slowly over time within a set of constitutional-choice rules, which were modified, if at all, very unfrequently). The contemporary use of the term robustness in regard to complex systems focuses on adaptability to disturbances: ‘the maintenance of some desired system characteristics despite fluctuations in the behaviour of its component parts or its environment’ (Carlson and Doyle)” (E. Ostrom 2005a, 258).

<sup>31</sup> I will not discuss the eight design principles in the order that Ostrom presents them in, but rather in a sequence that suits the logic of my argumentation.

communication in dealing with multi-level social dilemmas, it makes sense to begin with Ostrom's seventh principle: "minimal recognition of rights to organize" (E. Ostrom 2008a, 90). According to Elinor, this entails "[t]he rights of users to devise their own institutions [that; LP] are not challenged by external governmental authorities" (E. Ostrom 2005a, 259). It is implicit in this principle that users have "long-term tenure rights to the resource" (ibid.).<sup>32</sup> These simple yet fundamental principles provide people not only with the rights to access and use the resource, but also to define the institutional framework that regulates it. This enables people to have a long-term interest in the maintenance of the resource and allows communication and self-organizing to take place at all.

With this ability to communicate and self-organize, people are also able to define clear boundaries for those with rights to access and utilize the resource (design principle 1).<sup>33</sup> This is an important step that transforms open, unregulated commons threatened by overuse into closed and regulated commons (E. Ostrom 2008a, 90-1). This set of rules occurs on the constitutional-choice level and determines "the specific rules to be used in crafting the set of collective-choice rules that in turn affect the set of operational rules" (ibid., 52). Then, "collective-choice arrangements" and the policy rules of "how a CPR [common pool resource; LP] should be managed" (ibid.) must be defined (design principle 3). People are then able to create operational rules that regulate the daily utilization of the resource according to local conditions and the different inputs and needs of the people involved (design principle 2). According to Ostrom, it is especially important here to note a "proportional equivalence between benefits and costs" (E. Ostrom 2005a, 262). This supposedly implies: "When the rules related to the distribution of benefits are made broadly consistent with the distribution of costs, participants are more willing to pitch in to keep a resource well maintained and sustainable" (ibid., 263). In simpler terms, fair rules are important to maintain levels of

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<sup>32</sup> This aspect of the seventh design principle was not included in her book *Governing the Commons* first published in 1990 but was added in her later book *Understanding Institutional Diversity* published in 2005..

<sup>33</sup> The definition of clear boundaries of a common pool resource is necessary, according to Elinor Ostrom, when the resource units consumed are rival or subtractive goods. In comparison to non-rival or non-subtractible goods such as information that can be organized as open-access regimes, the scarcity and subtractibility of goods makes it necessary to regulate the appropriation and consumption thereof. According to Ostrom, this is the central distinction between common property and open-access regimes (E. Ostrom 2008a, 91-2, E. Ostrom 2010a, 642, 644).

trust and reciprocity, on the one hand, and to uphold stable institutions and the sustainable use of resources, on the other hand.

Although the constitutional-, collective- and operational-choice levels of rules and rule-making are analytically differentiated here, Ostrom notes that self-organizing and self-governing people in field settings “go back and forth across levels as a key strategy for solving problems” (E. Ostrom 2008a, 54). In relation to all three levels of rule-making, it can generally be said that when most of the individuals who are affected by a resource unit are able to continually configure and modify their own rules, these rules are then more likely to better suit local environmental conditions and the affected individuals’ needs. Furthermore, such participation not only limits elites from creating policies that only benefit themselves, but it also empowers individuals to co-produce rules and public goods that are more likely to be considered fair, adhered to and fostered (E. Ostrom 2005a, 263).

After discussing the general design principles for the supply of institutions, we must now turn our attention to the problem of the adherence to these rules. Although the creation of fair and suitable institutions by those affected strongly increases the commitment to adhering to the rules, the fragility of reciprocity and trust implies that shared norms are not sufficient for maintaining cooperation and higher joint outcomes. To strengthen one’s trust that one is not being taken advantage of, rule infraction and free-riding must be additionally controlled and limited through certain forms of monitoring, sanctioning and other conflict-resolving mechanisms. While Hardin and many others believe that only external coercion can solve the problem of rule violation, Elinor believes this solution to be a sleight of hand because it does not address the costs and motivations of the external enforcer (E. Ostrom 2008a, 44, 96). Although external enforcers can, in certain cases, be useful and necessary, she argues that in order to solve the commitment problem, affected individuals have to “motivate *themselves* (or their agents) to monitor activities and be willing to impose sanctions” (ibid.; emphasis added). The commitment problem thus boils down to the willingness of affected individuals to adhere to collectively self-determined rules – and to the assurance that others will also act accordingly. For this reason, the commitment problem is inherently interwoven with the monitoring problem.

Monitoring generally implies that resource conditions and harvesting activities are visible and checked on. Ostrom's research on long-enduring resource regimes has shown that monitoring works well if the monitors are appropriators themselves or are elected by and accountable towards appropriators (design principle 4) (E. Ostrom 2005a, 265). In some cases, mutual monitoring simply occurs as a "natural by-product of using the commons" (E. Ostrom 2008a, 96). In cases where local monitors are elected, these officials are, in turn, often also monitored by the appropriators who are usually those who initially elected their officials. The redundancy in this system of mutual monitoring is a central strategy to minimize the "*quis custodiet ipsos custodes?*" problem that Hardin formulated for what he understood as "socialism." Furthermore, the attractiveness of formal and informal mutual monitoring by appropriators is increased—besides gains in status, prestige and other small material rewards from sanctioning – by the access to valuable information of the resource and compliance rates for future strategic decisions (ibid., 97). Although mutual monitoring can easily be considered highly inefficient because of its redundancy, research shows that it is actually an effective and low-cost mechanism to strengthen mutual trust and maintain higher joint outcomes.

For monitoring to have any effect on trust and compliance, however, it must be coupled with different mechanisms of sanctioning (E. Ostrom 2005a, 266-7). Sanctioning can either occur by the appropriators themselves or by officials accountable towards the appropriators – or by both (E. Ostrom 2008a, 90). Contrary to general assumptions that trust and compliance are maintained through harsh punishments of rule violation,<sup>34</sup> Ostrom's research demonstrates that graduated sanctions are both less costly and more effective than initial major fines (design principle 5) (ibid., 98). She writes that "[i]n many self-organized systems, the first sanction imposed by a local monitor is so low as to have *no* impact on the expected benefit-cost ratio of breaking local rules (given the substantial temptations frequently involved)" (E. Ostrom 2005a, 266; emphasis i.o.). In many cases, the initial sanction that is "imposed" is when the monitor merely informs both the community and the person that they were caught violating the rules (ibid.).

<sup>34</sup> In the literature on game theory, the most frequently discussed punishment is the grim trigger. Here, "a participant, once he or she has detected any level of cheating, plays the Nash equilibrium strategy forever" (E. Ostrom 2003, 52). The problem with the grim trigger, however, is that it "immediately could lead to the rapid unravelling of the agreement and the loss of substantial benefits over time" (ibid., 53). Although it is often assumed that the grim trigger is normally used in social interactions as an ultimate threat to secure rule conformity, research on game theory provides a different picture: "Few subjects use grim triggers, however, in experimental contexts" (ibid., 52).

These low-cost sanctions have an impact because they are a subtle form of public shaming and damage the reputation and trustworthiness of the individual. This threatens the individual's social status and evolutionary "fitness" because other people could possibly – in a "tit-for-tat" or "measured reaction" (E. Ostrom 2003, 42, 52-3) – stop cooperating with this person, which, in turn, produces an incentive to quickly return to a more cooperative strategy.<sup>35</sup> Ostrom explains, however, that the more serious problem of repeated rule infractions is often dealt with by escalating sanctions because it "enables such a regime to warn members that if they do not conform, they will have to pay ever higher sanctions and may eventually be forced to leave the community" (E. Ostrom 2005a, 267).

With reference to Margaret Levi, Ostrom explains that monitoring and escalating punishment strategies create a regime of "quasi-voluntary compliance". Here, cooperation is initially voluntary because if non-cooperation arises, it will be subject to coercion (E. Ostrom 2008a, 94-5). More importantly, it must be noted that these strategies generally maintain or increase levels of quasi-voluntary compliance and trust among appropriators so that – contrary to Hardin's assumption – one-hundred-percent compliance is not necessary. In relation to endogenous factors, Ostrom writes:

"If only a small deviation occurs, the cooperation of most participants is already generating positive returns. By keeping one's own reaction close to the agreement, one keeps up one's own reputation for cooperation and makes it easier to restore full conformance because cooperation levels are higher" (E. Ostrom 2003, 53)

For this reason, contingent self-commitment<sup>36</sup> does not trigger a relentless process of over-use and free-riding when others break with the agreement (E. Ostrom 2008a, 97-8). In turn, the exogenous variables of local mutual monitoring and graduated sanctioning can assure appropriators of the fact that the conformance of others to the

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<sup>35</sup> Elinor Ostrom explains that the most common – or most famous – reaction to non-cooperation is the tit-for-tat reciprocal strategy. This mechanism can be defined as "reciprocate first, and then do whatever the others did the last round" (E. Ostrom 2003, 42). It appears that this tactic is also utilized in most field experiments to punish the rule violator for a specific negative action. Yet, in comparison to the unforgiving grim-trigger strategy, the offender receives the chance to change their strategy and return to cooperation and higher joint outcomes without further sanctions.

<sup>36</sup> Ostrom explains that contingent self-commitment implies the following type of pledge: "I commit myself to follow the set of rules we have devised in all instances except dire emergencies if the rest of those affected make a similar commitment and act accordingly" (E. Ostrom 2008a, 99-100). In this context, contingent means that the individual will adhere to the rules as long as (most) others also do. This type of contingent self-commitment resembles the tit-for-tat strategy of norm reciprocity.

rules is being controlled. This can then increase levels of trust and enables appropriators to “continue their own cooperation without constant fear that others are taking advantage of them” (E. Ostrom 2005a, 265). Furthermore, it must also be emphasized that, in comparison to external surveillance and coercion, quasi-voluntary compliance through mutual monitoring and graduated sanctioning can effectively increase trust, reciprocity and commitment at extremely low costs.

To strengthen this reinforcing relationship between rule creation, contingent commitment and mutual monitoring, Ostrom also mentions the importance of conflict-resolution mechanisms for this process (design principle 6). Conflict-resolution mechanisms imply that “[a]ppropriators and their officials [should; LP] have rapid access to low-cost local arenas to resolve conflicts among appropriators or between appropriators and officials” (E. Ostrom 2008a, 90). The reason why such mechanisms are helpful is because – unlike physical constraints – “rules [...] have to be understood in order to be effective” (E. Ostrom 2005a, 267). In other words, even when appropriators have defined the rules themselves, the interpretation and administration of social rules is always ambiguous and can therefore easily lead to conflicts (E. Ostrom 2008a, 100). Due to this inherent ambiguity, there must be local arenas and simple mechanisms that enable people to discuss and resolve the precise definitions of rule violation in diverse cases (*ibid.*). Although Ostrom emphasizes the importance of local and sometimes quite informal techniques to deal with conflict, she stresses the necessity of well-developed court mechanisms above the level of the local resource. Such arenas at higher institutional levels are, for example, especially important in reducing the problem of elite capture. Even though such arenas do not guarantee cooperation and the maintenance of robust institutions, Ostrom considers it unlikely that robust institutions can exist over long periods of time without such institutional arrangements (*ibid.*, 101). Generally, it can be said that this ability to deliberate on and deal with these conflicts in a simple and uncostly manner can increase the levels of rule adherence and trust within a specific community (E. Ostrom 2005a, 268).

Aside from these seven design principles, Elinor Ostrom adds a final eighth principle to the list: Nested enterprises. This principle is of importance for common pool resources that are either relatively large or parts of larger resource systems. We will discuss this



eighth design principle in the next section in relation to Ostrom's more general understanding of polycentric governance systems.

#### **4.6. Institutional Diversity and Polycentricity**

The previously discussed design principles are explications of the exogenous, institutional variables that can strengthen the endogenous variables of reciprocity, trust and reputation in order to overcome social dilemmas. It was shown that first-, second- and third-order social dilemmas can be solved in a mutually reinforcing manner (E. Ostrom 2005a, 267, E. Ostrom 2008a, 100). We will now turn to the broader and more general implications of these results for the understanding of institutional design, democratic theory and ecological sustainability.

Firstly, the results of Elinor Ostrom's extensive meta-analysis of diverse common property resources has shown that it is possible for individuals and communities who are confronted with social dilemmas to change the very institutional structure that they are facing and limit or even eliminate overuse and freeriding. This finding is extremely significant because it demonstrates that people can solve diverse "tragedies of the commons" without resorting to the classical – and sometimes quite problematic – models of privatization or centralized state coercion. Formulated more fundamentally, "What the research on social dilemmas demonstrates is a world of possibility rather than one of necessity" (E. Ostrom 2003, 62). For this reason, Elinor Ostrom explains that not commoners but rather academics appear to be trapped in tragedy: "Instead of the users of a commons being inexorably trapped in a tragedy, it is the scholars who have allowed their assumptions to trap them into a presumption that short-run tendencies will necessarily prevail in the long run" (E. Ostrom 1986, 26). Despite this positive finding, her research has also shown that people do not always choose a higher joint outcome whenever possible. As many other examples of depleted common pool resources that Ostrom discusses show, "[e]stablishing a *possibility* is not the same as establishing *necessity*" (E. Ostrom 1986, 25; emphasis i.o.). This generally implies that trust, reciprocity and collective action are extremely delicate matters and require diverse institutional structures that are adapted to diverse social and material conditions.

Aside from formulating this new perspective for solving commons dilemmas, Elinor Ostrom's work has also challenged the classical dualistic concept of founding a social contract and subsequent institutional change. An important insight that Ostrom provides with her empirical analysis of diverse field cases is that there is no "state of nature" without any institutional structure. Specifically, "[t]he Hobbesian state of nature is logically equivalent to a situation in which rules exist permitting anyone to take any and all desired actions, regardless of the effects on others" (E. Ostrom 2008a, 140). This implies that human interaction is always embedded in institutions<sup>37</sup> and that no fundamental difference exists between an "original" social contract and the change of institutions<sup>38</sup>: "Once one assumes that all recurring situations are characterized by a set of status quo rules, then it is possible to broaden the concept of institutional supply to include both what can be called the 'origin' of new institutions and the changing of existing institutions" (ibid., 140). Contrary to most contractarian philosophers who categorically distinguish between a state of nature and civilized society, firstly, this conceptualization of human interactions and institutions enables Ostrom, as already mentioned, to understand humans as egotistical utility maximizers that are a product of specific institutional arrangements. Secondly, she formulates one single theory of institutional origin and reform for operational-, collective- or constitutional-choice levels of decision making, in which change is a continual "sequential and incremental process" (ibid., 141).

A third important implication of her work is that she places the micro-situational institutions governing smaller-scale common pool resources in a broader context of nested and multi-leveled polycentric institutions. In relation to her understanding of institutional change on different levels of choice within institutions, Ostrom explains that accumulated social and "institutional capital"<sup>39</sup> can then be utilized for governance

<sup>37</sup> Elinor Ostrom defines institutions in the following manner: "'Institutions' can be defined as the sets of working rules that are used to determine who is eligible to make decisions in some arena, what actions are allowed or constrained, what aggregation rules will be used, what procedures must be followed, what information must or must not be provided, and what payoffs will be assigned to individuals dependent on their actions. All rules contain prescriptions that forbid, permit, or require some action or outcome" (E. Ostrom 2008a, 51).

<sup>38</sup> Elinor Ostrom defines institutional change as such: "A change in any rule affecting the set of participants, the set of strategies available to participants, the control they have over outcomes, the information they have, or the payoffs is an institutional change" (E. Ostrom 2008a, 140).

<sup>39</sup> Although Elinor Ostrom has never precisely defined the term "institutional capital," she has used it numerous times in her writing. Generally, it appears to imply the functioning of institutions that has evolved and developed through the adaptation of the system to solve certain problems – whether biophysical or social. Institutional capital also implies the developed habits and acquired knowledge of the people who build and maintain their own institutional systems. Ostrom writes:

on higher levels of scale: “Success in starting small-scale initial institutions enables a group of individuals to build on the social capital [of trust, reputation and reciprocity; LP] thus created to solve larger problems with larger and more complex institutional arrangements” (ibid., 190). In an article for the United Nations Rio+20 summit that she wrote shortly before her death in 2012, she explains the general importance of locally-governed institutions in a polycentric system for environmental sustainability:

“No one knows for sure what will work, so it is important to build a system that can evolve and adapt rapidly. Decades of research demonstrate that a variety of overlapping policies at city, subnational, national, and international levels is more likely to succeed than are single, overarching binding agreements. Such an evolutionary approach to policy provides essential safety nets should one or more policies fail. [...] Sustainability at local and national levels must add up to global sustainability. This idea must form the bedrock of national economies and constitute the fabric of our societies. The goal now must be to build sustainability into the DNA of our globally interconnected society” (E. Ostrom 2012)

While we have mentioned previously that Elinor Ostrom emphasized that one single model does not fit all situations, she clearly advocates a specific direction in which political development should move: The strengthening of bottom-up initiatives and self-transformative processes to deal with global issues of sustainability.

Although the advantages of decentralized, participatory governance in polycentric systems have already been mentioned, I would like to shortly summarize them. Firstly, local and disaggregated knowledge of both the existing social values and norms and of the biophysical system and its changes can be used to create better rules that are adapted to local conditions. Second, the creation of suitable and legitimate rules that foster trust and reciprocity increases rule conformity and decreases the costs of monitoring and sanctioning. And third, the existence of parallel autonomous systems reduces the probability of immense failure spanning larger regions (E. Ostrom 2005a, 281-2). Even though it is often believed that institutions that are “complex, redundant,

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“Current theories of collective action do not stress the process of accretion of institutional capital. Thus, one problem in using them [traditional theories of collective action; LP] as foundations for policy analysis is that they do not focus on the incremental self-transformations that frequently are involved in the process of supplying institutions. Learning is an incremental, self-transforming process” (E. Ostrom 2008a, 190). Elsewhere, she explains: “Applying models out of range can produce more harm than good. Public policies based on the notion that all CPR appropriators are helpless and must have rules imposed on them can destroy institutional capital that has been accumulated during years of experience in particular locations, as illustrated by the Nova Scotia fishery cases” (ibid., 184).

and nested in many layers” (Dietz et al. 2003, 1910) are inefficient, Ostrom’s research shows that such decentralized and participatory forms of governance can, in fact, be quite effective in dealing with social dilemmas and tragedies – and therefore also in increasing joint benefits.

For those reasons, both Elinor and Vincent Ostrom argue that commons-like institutions should be integrated in the management and provision of public goods. This is what they call “co-production” (E. Ostrom 1996, Parks et al. 1981). Elinor Ostrom’s basic definition of co-production is “the process through which inputs used to produce a good or service are contributed by individuals who are not ‘in’ the same organization” (E. Ostrom 1996, 1073). In comparison to the more widespread public choice theory, the Ostroms did not, however, limit their understanding of co-production to public-private partnerships in which public goods are outsourced to private corporations. Instead, they argue that co-production should “cross the great divide” (ibid.) between the state and economy and integrate civil society. The aim of this is to create decision-making arenas that unite the possibly conflicting interests of producers, consumers and regulators. Although not explicitly stated, it can be assumed that participation in the production and governance of such goods and services depends on one’s affectedness. While the importance of a clearly-defined *demos* is understood as the first design principle of long-enduring, self-governing institutions for common resources, the fundamental problem of how to measure this affectedness and of who shall decide who is affected and can participate is, unfortunately, not dealt with in their work. Nevertheless, by “unlocking public entrepreneurship and public economies” (E. Ostrom 2005b), it is hoped that consumers will transform into active citizens. Instead of isolating the public from the private, the Ostroms argue that bureaucratic state administration must be democratized (V. Ostrom 1974, 111).

However, because decentralized decision-making does have its own weaknesses, Elinor and Vincent Ostrom argue that these institutions must be located within the larger institutional context of a complex polycentric system. The importance of higher-scale institutions becomes apparent when the limits of community governance are discussed. In short, these include: (1) The lack of organization by some appropriators, (2) the failure of some self-organizing efforts, (3) local tyrannies and elite capture, (4) stagnation or the lack of institutional innovation, (5) illegitimate discrimination and

exclusion, (6) the limited access to scientific information, (7) serious conflict among appropriators and between common pool resource systems, and, most importantly, (8) the inability of small-scale institutions to deal with larger-scale common pool resources (E. Ostrom 2005a, 282).

Due to these limitations, Ostrom strongly emphasizes that local self-governed resources must be built into – or nested in – a larger multileveled polycentric governance system. Ostrom explains what she understands as the concept of polycentricity in her book *Understanding Institutional Diversity*:

“By polycentric I mean a system where citizens are able to organize not just one but multiple governing authorities at different scales. Each unit exercises considerable independence to make and enforce rules within a circumscribed domain of authority for a specified geographical area. In a polycentric system, some units are general-purpose governments while others may be highly specialized. Self-organized resource governance systems in such a system may be special districts, private associations, or parts of the local government. These are nested in several levels of general-purpose governments that also provide civil equity, as well as criminal courts” (E. Ostrom 2005a, 283)

The advantage of such a polycentric system is that while users have the authority to define some of the local rules, serious problems such as local tyrannies, corruption and inappropriate discrimination can, in turn, be addressed. According to Elinor, polycentric systems enable to deal with such problems through “larger general-purpose governmental units who are responsible for protecting the rights of all citizens and for the oversight of appropriate exercises of authorities within smaller units of government” (ibid.). Another advantage of such nested enterprises is that interaction and the exchange of information over what has worked and what has not can also take place. Finally, and most importantly, a polycentric system strengthens institutional robustness and evolutionary fitness in that if small systems fail, larger systems can pitch in and help, and if larger systems are instable or break down, the smaller systems can possibly survive and support the reconfiguration of the larger institutions (ibid.).

That being said, Elinor Ostrom acknowledges that polycentric systems are not easy to deal with – neither for affected participants themselves nor for social scientists. A central problem which she recognizes is the serious potential of conflict between

diverse units “at multiple levels due to their interdependence” (ibid., 286). While such conflict can lead to serious violence, the conflict can also generate more information for participants to solve the specific problems that are being fought over. For scholars, on the other hand, polycentric systems often look “terribly messy and [are; LP] hard to understand” (ibid.). For this reason, Elinor advises scientists to resist their “love of tidiness” (ibid.) and to “develop better theories of complex adaptive systems focused on overcoming social dilemmas” (ibid.). In relation to these numerous and diverse difficulties in dealing with decentralized, participatory governance in polycentric systems, Elinor Ostrom recognizes that “[c]oping with potential tragedies of the commons is never easy and never finished” (ibid.).

#### **4.7. Interim Conclusion**

Without repeating the previously presented results of our discussion of the Ostroms’ work, I will now turn to a few concluding reflections on Elinor and Vincent Ostrom’s work that will influence our discussion of the relationships between democracy, markets and commons.

In general terms, the work of Elinor and Vincent Ostrom has shown that the tragedy of unregulated commons and what I have then defined as the tragedy of open and competitive commons can be overcome. As Elinor has demonstrated, these problems could be overcome by cultivating communication, reciprocity and trust on the one hand and by developing rules and regulations against overuse that are, in turn, upheld through mutual monitoring and graduated sanctioning on the other hand. It is important to note that their findings also emphasize that the people affected by a specific resource system should be included in the co-determination of its rules and regulations in order to provide an institutional framework that is adapted to fit the specific cultural and ecological context. Such forms of democratic self-governance are also understood as strategies in dealing with limitations in the provision of public goods by the state. The Ostroms called this type of democratic collaboration with the government co-production, which must be understood as an alternative to the otherwise widespread notion of public-private partnerships. We might call this alternative type of organization a public-civil society or possibly even a public-commons partnership. Yet, due to the weaknesses of small-scale democratic self-governance of economic goods and activities,

they argued that these units should be embedded in a multi-layered and polycentric system of overlapping and democratically governed units.

Despite these improvements in our understanding of how to deal with the problem of tragedy and the manner in which democratic forms of governance can be developed, the Ostroms' work is nevertheless somewhat limited in three respects. Firstly and as already discussed, their work lacks both a critique of privatization and of open and competitive markets. For this reason, I would argue that while Hardin's thesis was disproven in certain cases, it is important to note that the perpetually occurring tragedy of open and competitive markets and the power asymmetries that result thereof were almost entirely ignored by them (Mattei 2013a, 20). Secondly, Elinor Ostrom's somewhat positivistic description of successful and unsuccessful commons importantly lacks explicit *normative* arguments why societies should develop democratic common property arrangements (Levine 2011, 11-13). Elinor accentuates this problem when she emphasizes that there exist no single best social arrangements and that commons are no panacea (E. Ostrom 2010b, 2005a, 258).<sup>40</sup> This is understandable considering the problems of top-down blueprint thinking and policy implementations that the Ostroms discuss. Nevertheless, the lack of explicit normative arguments is highly problematic because it provides little counterweight to widespread and rather well articulated arguments for individual private property and open and competitive markets – despite the existing negative effects that result therefrom. Thirdly, their rather narrow focus on common pool resources rather than common property arrangements accentuates this problem. This leads to the false impression that commons are specific things (pastures, forests etc.) and not social arrangements that can be utilized for the organization of more or less all resources and goods. Due to this rather limited definition of commons and their lack of explicit normative arguments for commons arrangements, it can be expected that commons might simply remain charming niches in the threatening stormy seas of the existing market society.

In order to deal with these problems, I believe it necessary to develop a normative justification of commons in the name of ecological sustainability and human freedom. I

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<sup>40</sup> In an interview with Elinor Ostrom by Fran Korten in Yes! Magazine after she won the Nobel Memorial Prize in Economic Sciences in 2009, she was asked what her advice to someone with much influence on natural resources policy would be. Her answer was: "No panaceas!" (E. Ostrom 2010b). In her book *Understanding Institutional Diversity* she writes, "As social scientists, we have to use one of our favorite slogans [...] – it depends!" (E. Ostrom 2005a, 258).



will do this in relation to the institutions of property, the state and the market. But before that, I will, however, firstly develop an ecological understanding of democracy and the commons that prioritizes the shared, common reality of humans and the non-human world and their co-creation thereof. Let us therefore now turn to a more ecological approach to the commons.

## 5. An Ecological Understanding of the Commons

In this chapter I would like to turn to a category that is of central importance to our discussion of the commons, but is almost entirely neglected in the work of Elinor Ostroms: Nature. For Elinor, it appears as though nature is somewhat reduced to passive resources in the “drama of the commons” (Ostrom et al. 2002). Nature is the stage on which the human theater takes place. Here, the relationship between humans and nature is implicitly instrumental. Although such an interpretation of nature might appear to be sufficient in order to deal with environmental problems and “planetary boundaries” (Steffen et al. 2015), I would argue that its underlying Society-Nature dualism is both conceptually false and problematic. The dualism is false, because humans and human society are always a part of nature: There is no outside of nature. The dualism is problematic, because the external environment is primarily understood as a limit to one’s individual freedom – and not as an interdependent precondition thereof. Furthermore, this instrumental and antagonistic relationship also leaves the door open for a hierarchical and exploitative relationship of man over nature. It would be absolutely wrong to say that Elinor Ostrom intended to do this, but I believe that her analysis does not critically reflect their understanding of nature and the Malthusian-Hardian “stage” that she found herself on. Despite her insightful solutions to the problems of tragedy, the unregulated commons remains the overarching and ahistorical model of man in nature. In order to overcome this framework, it is therefore necessary to reflect and develop a more adequate understanding of nature for a free and sustainable society. Or in the words of Robyn Eckersley, I aim to shift our understanding of the “environmental problem” from a “crisis of survival” to an “opportunity for emancipation” (Eckersley 1992, 11-21).

In this chapter, I will therefore proceed as follows. Firstly, I will discuss the relationship between nature, language and social arrangements and argue that humans’ social practices and institutions are always interrelated with the their conceptions of nature. Secondly, I will then attempt to develop a more timely understanding of nature that is more conducive to the principles of freedom and ecological sustainability. Here, I will develop a notion of nature based on new insights in diverse fields of thought, in which organisms perpetually self-organize and dynamically adapt together with their changing

environments. With reference to the work of Andreas Weber, I will understand nature as web of life that is constituted of interdependent organisms and ecosystems. Thirdly, I will discuss the importance of this ecological interdependence for humans, which constitutes a shared, common reality as the backbone of their individual freedom. Next, I will flesh out an ecological understanding of democracy with reference to the principles of care and the civic tradition of democracy. Finally and with reference to the work of Ugo Mattei and Fritjof Capra, I will then develop an ecological concept of the commons, which goes beyond common pool resources and emphasizes the civic practices of commoning in, with and through nature.

## **5.1. Nature, Language and Social Relations**

Before we begin our discussion of our specific understanding of nature, I would like to explain why our understanding of nature is of such great importance for our discussion of commons. A more reflected analysis of nature aims not only to determine where the “safe operating space” within planetary boundaries lie (Rockström et al. 2009). Instead, I will argue a society’s understanding of its natural world is central to the way humans interact with it and with each other.

As just mentioned in the introduction to this chapter, the premise of this examination is that humans and society are always a part of nature. This apparently naïve claim receives a little more depth if understood in the light of Marx and Engels’s *German Ideology*, in which they write,

“The first premise of all human history is, of course, the existence of living human individuals. Thus the first fact to be established is the physical organisation of these individuals and their consequent relation to the rest of nature. [...] All historical writing must set out from these natural bases and their modification in the course of history through the action of men” (Marx and Engels 1998, 37).

By understanding humans and human history as embedded in nature, we must conversely also understand our ideas of nature as a specific result of our social relations. Or again in the well-known words of Marx and Engels: “The ruling ideas are nothing more than the ideal expression of the dominant material relations, the dominant

material relations grasped as ideas” (ibid., 67).<sup>41</sup> This classical “materialist” notion of ideas implies that the prevalent ideas of society and nature are largely historical results of contingent power relationships and a legitimation thereof. In this manner, social institutions are naturalized and our conceptions of nature reflect the dominant form of social organization. In turn, the symbolic ordering of these representations also constitute and reproduce the organization of nature.

In contrast to a crude deterministic interpretation of Marx’s base-superstructure relationship between social relations and ideas, I contend that our ideas (of nature) are not only a result of the social relations but can also transform them. Marx admits this himself in his discussion of the labor process, through which ideas are brought into reality (Marx 1982a, 284).<sup>42</sup> Elsewhere, he also claims that ideas can be used for political collective action when they influence a wider population: “[T]heory, too, becomes a material force once it seizes the masses” (Marx 1982b, 137). I do not want to pursue a detailed discussion of Marx’s theory of historical materialism and social praxis here. Nevertheless, this very short discussion of Marx aims to underline the embeddedness of language in both the physical nature and social arrangements thereof. Furthermore, it emphasizes that ideas can, in turn, be utilized to transform social action and the organization of the material world. It is in this sense that language and concepts are of utmost importance in the reproduction and transformation of what we generally understand as “life”.

In a somewhat similar manner, Vincent Ostrom discusses this relationship between language, reality and social relations in his book *The Meaning of Democracy and the Vulnerabilities of Democracies* (1997). Here he writes,

“The meaning associated with the triangulation of images [mental states], events and relations [the objects and states of the world referred to] and words or symbols [names assigned to events and relations] involves a shared community of understanding among language users. Tacit levels of understanding go beyond the mere use of words and of definitions stated in a

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<sup>41</sup> The rather well-known saying of this is: “It is not consciousness that determines life, but life that determines consciousness” (Marx and Engels 1998, 42).

<sup>42</sup> “At the end of every labour process, a result emerges which had already been *conceived* by the worker at the beginning, hence already existed *ideally*. Man not only effects a change of form in the materials of nature; he also realizes [verwirklicht] his own purpose in those materials. And this is a purpose he is conscious of, it determines the mode of his activity with the rigidity of a law, and he must subordinate his will to it. This subordination is no mere momentary act” (Marx 1982a, 284).

more profuse use of words, as in dictionaries. In a sense, an 'organic' tie pervades intelligible communication by reference to the tacit common understandings that are fashioned by communities of language users. [...] *The essential link is language*. Language associates thoughts, ideas, and knowledgeable articulations of skill in actions to what gets done – ideas to deeds." (V. Ostrom 1997, 130)

With Vincent Ostrom, it could thus be said that language holds the relationship between ideas, things and social relations together. In other words, it is not merely social relations that determine one's ideas and the distribution of power within society, but it is also language, which constitutes these specific arrangements. Societies use language and ideas in specific ways that are, however, not always fully conscious to the individuals using them. This tacit common understanding can possibly be compared with Marx's notion of consciousness that is organically and often unconsciously determined by social arrangements (Marx and Engels 1998, 42). These tacit "ruling ideas" (ibid., 67) bring about specific patterns of action and, in turn, what Ostrom calls with reference to Searle "institutional facts" (V. Ostrom 1997, 128). For Vincent Ostrom, an institutional fact is the "social reality that is itself an artifactual construction by relying on norms and rule-ordered relationships" (ibid.). He utilizes the term artifactual to connote that social reality is constructed by humans and their (tacit) concepts of society.

For this reason, Elinor Ostrom also maintains in her book *Governing the Commons* that we must critically reflect our "metaphorical use of models" due to their influence of policy prescription and collective action (E. Ostrom 2008a, 8). With Elinor Ostrom we could therefore say that the reformulation of metaphors, concepts and ideas provides us with new "heuristics, strategies, norms [...] [or] rules of thumb" (E. Ostrom 2003, 40). These "focal points" (ibid., 41) help us (re-)orient ourselves in our interactions with the world. Thus, the reflection of our use of language and concepts, in turn, opens up choices in the way we organize society and can "increasingly transform the material conditions of their environment" (V. Ostrom 1997, 128). Within this framework, language and ideas are thus understood as key determinants in the reproduction and transformation of social order and material reality. Put somewhat differently, we can therefore maintain that concepts do not only provide us with abstract ideas that help us understand an objectively given reality, but also co-constitute the symbolic-material order of things (Castoriadis 1987, Latour 1993, Foucault 2002).

Along these lines, it can therefore be argued that our (tacit) common understanding of nature holds an important position in this process of reproduction and transformation. The reason for this is that our knowledge and concepts of nature are both a result of material conditions and social relations, on the one hand, and a constituting force of the political organization of the environment, on the other. As Jason W. Moore generally puts it in his book *Capitalism in the Web of Life*:

“Modernity's structures of knowledge, its dominant relations of power, re/production, and wealth, its patterns of environment-making: these form an organic whole. Power, production, and perception entwine; they cannot be disentangled because they are unified, albeit unevenly and in evolving fashion” (Moore 2015, 3).

Although Moore speaks of modernity here, the point can be applied to all of human history: “humans make environments and environments make humans” (ibid.). Society and nature or “human history” and “natural evolution” are intertwined and co-produce each other both symbolically and materially. Jason Moore calls this the “double internality” of the society-nature relationship (ibid., 5). The reason why our knowledge and concepts of nature are of such great importance is therefore because they provide the material or, rather, organic backdrop of reality that structure our possibilities of how to act and arrange society. In his article *The Nature of Environment* (1993) David Harvey therefore argues,

“If all socio-political projects are ecological projects and *vice versa*, then some conception of 'nature' and of 'environment' is omnipresent in everything we say and do. If, furthermore, concepts, discourses and theories can operate, when internalised in socio-ecological practices and actions, as 'material forces' that shape history, then the present battles being waged over the concepts of 'nature' and of 'environment' are of immense importance. All critical examinations of the relation to nature are simultaneously critical examinations of society” (Harvey 1993, 39).

Due to the inherent interrelation of language, nature and social relations, I would therefore contend that the different ecological, economic and political crises that contemporary societies are facing today are also a result of *specific* conceptions of nature. In order to deal with these problems, we therefore also have to rethink our central concepts that constitute this relationship, such as the mind-body, subject-object, individual-society and human-nature dichotomies (Dewey 1930, Latour 2013). As I will show, this shift should move us beyond a reductionist, mechanistic and deterministic to a more systemic and adaptive understanding of nature and society. Or more specifically,

it is a shift from a dualistic and anthropocentric to an interrelated and ecocentric model, in which humans are conceived as interdependent, creative components of the natural world (Dewey 1929, Eckersley 1992, Stengers 2010/2011).

Before continuing, it is of utmost importance to stress that this does not imply that we can simply create another reality by describing it differently. That would be solipsistic and naïve, especially considering the interests of those who are not interested in such social change. Nevertheless, the aim is to develop a new “shared common understanding” of nature that will influence people’s patterns of (inter)actions and possibly become a “material force” of social change towards a more democratic society. In order to see how this might be done, let us therefore now turn to some preliminary reflections on this new concept of nature.

## **5.2. Preliminary Reflections on the Concepts of Nature**

In order to develop a different interpretation of nature that is conducive to commons, I would like to focus on two pieces of writing: *The Ecology of Law: Toward a Legal System in Tune with Nature and Community* (2015) by Fritjof Capra and Ugo Mattei and *Enlivenment: Towards a fundamental shift in the concepts of nature, culture and politics* (2013) by Andreas Weber. As Capra and Mattei emphasize, their critique revolves around the rise of a rationalist and mechanistic understanding of the world through the Scientific Revolution and Enlightenment constituted by scholars like Galileo, Descartes, Hobbes, Newton and Locke. For Weber, the problem is not only in this reductionism, but also in the determinism interpretations of competition and natural selection. These interpretations of reality, in turn, provide us with a biological “metaphysics of our culture” (Weber 2013, 23) and the cornerstones of how human society can, and therefore should, be organized.

A key moment for both authors in the development of their worldviews is Descartes’ differentiation between *res cogitans* and *res extensa* through which the subjective human spirit is separated from – and placed above – objective, material reality. While the realm of life and freedom is limited to the spirit, the material world is understood as a mechanistic machine that is determined by universal and natural laws. According to Capra and Mattei, this conception of natural laws was then adopted by legal scholars to



create an objective legal framework based on private ownership and state sovereignty, generally understood as “legal absolutism” (Capra and Mattei 2015, 6). Despite advances in evolutionary theory, Weber argues, in turn, that Malthusian and Social Darwinist “laws of nature” created an understanding of economy in which subjectivity and freedom were ultimately negated (Weber 2013, 23).<sup>43</sup> The biologist Richard Dawkins, for example, expresses this worldview most clearly in his book *The Selfish Gene*, as he writes: “We are survival machines – robot vehicles blindly programmed to preserve the selfish molecules known as genes” (Dawkins 2006, xxi). Due to the law-like nature of social reality, Weber goes so far as to say that the “deep metaphysics of our age, is a science of the non-living” (Weber 2013, 23). Although many intellectuals and scientists would not go so far as to deny the freedom of the individual, it is important to note that the belief that people exist in inherently antagonistic and therefore competitive relationships is deeply rooted in Western thought, including that of Hobbes, Kant and Freud. In simple terms, the antagonistic competition between atomistic individuals is assumed to be a universal law of nature. This is what Andreas Weber and others understand as bio-economics: The biological foundations of the open and competitive market (Arnhart 2015). Generally, the universalization of the principles of machine-like mechanisms of antagonistic competition has become an (often implicit) metaphysical framework within which Western society has interpreted and organized its social and natural world during the last few centuries. Additionally, as we have already discussed, it is this universalist institutional framework that has largely brought about the contemporary and interrelated ecological, socio-economic and political crises.

That being said, Capra, Mattei and Weber maintain that a paradigm shift in our fundamental understanding of the world is necessary to deal with these crises. Andreas Weber propagates a paradigm shift from that of the Enlightenment to one of “Enlivenment”. With reference to romantic and critical responses to the rationalism of the Enlightenment, Weber argues, however, that rationality should not be abandoned, but should instead be linked with subjectivity and sentience that exists in all living beings. For this to occur, he explains,

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<sup>43</sup> Weber explains: “The [economic; LP] process is subject-less and self-organized in the sense that eternal, external laws (that of selection and that of economic survival) punish or reward the behavior of atomistic black boxes called ‘Homo economicus’ – economic man – or in a more modern telling, the selfish gene” (Weber 2013, 23).

“It is necessary to explore a new narrative for what life is, for what life is to be alive, for what living systems do, and what their goals are. We need to explore how values are created by the realization of the living, and how we, as living beings in a living biosphere, can adapt the production needed for livelihoods to that reality, the only reality we have” (Weber 2013, 21).

Here, the individual or *res cogitans* is not understood as a separate entity from material reality but as a creative force within the process of the living world. For Capra and Mattei, this implies a shift from thinking of a “mechanism of law” toward an “ecology of law” which, in turn, is inherently associated with the concept of the commons. They explain,

“In the strict scientific sense, ecology is the science of relationships between the members of an ecological community and their environment. In this sense, then, the ecology of law refers to a legal order that is consistent with and honors the basic principles of ecology. *The ecology of law implies a process of transforming legal institutions from being machines of extraction, rooted in the mechanistic functioning of private property and state authority, into institutions based on ecological communities.* The ecology of law seeks a quality of economic life aimed at nurturing and preserving nature in the interest of future generations and overall human survival. The law should mimic the natural strategies of long-term ecological survival, including the reduction of waste and consumption. [...] In other words, an ecological vision of law does not reduce law to a professionalized, preexisting, objective framework ‘out there,’ separate from the behavior it regulates and tries to determine. Instead, law is always a process of ‘commoning,’ a long-term collective action in which communities, sharing a common purpose and culture, institutionalize their collective will to maintain order and stability in the pursuit of social reproduction. Thus the commons – an open network of relationships – rather than the individual, is the building block of the ecology of law and what we call an ecological order” (Capra and Mattei 2015, 14-15; emphasis added).

In other words, the basic idea here is to overcome the dualism of laws and individuals by contextualizing our understanding of law historically, socially and ecologically. This would enable us to understand law as a second-order commons that is created by humans and that should thus perpetually be reformed and adapted by those communities affected by these laws. The general point to be made here is that by widening our understanding of “nature”, we further increase the possibilities of ways in which we can organize social arrangements. Again, this is not to say that we can then realize any forms of social organization, irrespective of the existing condition, but it

implies instead that we can learn from our “first nature” so we can attempt to bring social arrangements into existence that are more or less well-adapted – and that can continuously adapt – to existing ecological conditions. This type of learning is what Capra and Mattei call eco-literacy and eco-design (Capra and Mattei 2015, 174-9). Interpreted in a less dualistic and more poetic manner according to Weber, it does not imply that we “copy nature’s objects, but rather [that we] follow [and participate in; LP] its [...] process of creative unfolding” (Weber 2015).

Before I continue, I would like to clarify a criticism that might arise here, being that this approach is nothing but a naturalistic fallacy. Here, it could be argued that I – and authors like Capra, Mattei and Weber – wish to transfer principles that we perceive in nature (“facts”) into human society and assume that the “is” should determine the “ought”. In essence, we are simply repeating the same mistake that Social Darwinists have made. This is also the argument that I have used against limiting our understanding of democracy to a representative democracy, merely because it is supposed to be the most prevalent form of democracy in the world. Here however, I would argue that the analysis of nature does not necessarily provide humans with fixed forms and parameters of organization to be transposed onto human society. Instead, our concept of nature can define the processes of human existence and freedom. In this sense, I would agree with Andreas Weber who maintains that

“Only if [an] organism is conceived of as a deterministic system are we trapped in the danger of the naturalistic fallacy, imposing value from the outside on something which is neutral. Living beings, however, exist according to embodied values. Their nature is to live according to values. The ontology proposed here is non-deterministic because of biological reasons” (Weber 2016, 39).

The point being made here is that this new interpretation of nature does not understand its functioning as something bound by strict laws. This would be a naturalistic fallacy because we define how we should act and organize society according to certain rules that supposedly exist in independence of humans. Instead, by understanding nature – and our interpretation thereof – as a creative process, we open up possibilities for human action through a process of socio-ecological co-creation (Dewey 1929, Latour 2004, Whitehead 1971). This comes close to what Elinor Ostrom described as the shift

from necessity to a world of possibilities (E. Ostrom 2003, 62), yet merely from a bio-ecological perspective. As we have seen with the competitive market, there are institutions that support this process of adaptation and others that impede it. As I will show, the notion of the commons supports this type of adaptation because they enable societies to perpetually alter their institutions according to diverse and changing conditions, needs and desires.

This notion, however, leads us to the problem that “nature” is a highly contested concept and that no one true understanding of nature has ever existed in human history.<sup>44</sup> Although it is true that interpretations of nature have varied throughout human history, I would argue that a purely discursive interpretation of nature is flawed. This would lead us into a solipsistic position in which we deny an “external” material reality and living world that resists the human desire to arbitrarily shape and form it. I believe this position to be flawed because knowing and learning must itself be understood as an embodied and creative process in the world. Nevertheless, symbolic descriptions of the material world will never be grounded on one ultimate truth but will change and adapt with new empirical insights and scientific hypotheses. With each description of our natural world, we also implicitly bring a certain symbolic arrangement of reality about. This is most clear in reference to our understanding of human “nature” and the self-fulfilling prophecies of the *homo oeconomicus* (Kapeller 2008, 34-40) in which we create social arrangements for the pursuit of individual self-interest (e.g. individual private property and open and competitive markets) and then feel confirmed that people are inherently egotistical. As empirical studies have shown, people also act accordingly when social situations are simply named differently (Lieberman et al. 2004).<sup>45</sup> That being

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<sup>44</sup> In reference to the contested question whether nature pursues a teleological purpose, Andreas Weber and Francisco Varela, for example, explain how the interpretation of this problem has changed throughout Western history: “The Greeks experienced nature as an ever-present horizon, most clearly set in Aristotle’s dictum: the final cause is a necessary precondition for the mechanical cause. But in medieval times the idea of finality radically shifted to divine will and design, the source of all meaning and purpose. The enlightenment opposed to that the even more radical position of human mind as the measure of things, where nature is only seen as mere object for the human subject. Recent times have shifted to post-modern views on nature as a purely historical locus, contingent and relative”(Weber and Varela 2002, 98).

<sup>45</sup> Varda Liberman, Steven M. Samuels and Lee Ross, for example, discovered that people act differently in similar social settings, depending on how these arrangements are named. They performed two experiments, one with American college students and the other with Israeli pilots and their instructors. Each group played either an N-move Prisoner’s Dilemma game called “the Community Game” or “the Wallstreet Game”, each respectively connoting more cooperative or more competitive norms. The rules of the two games were, however identical. Interestingly, the results of the experiment demonstrate that the levels of cooperation and defection varied depending on the label of the game. Liberman et al. conclude, “When told they were playing the Bursa [Wallstreet; LP] Game, participants

said, (human) nature is neither simply given nor entirely neutral but always implicitly conveys certain values of society. In this sense, our question about nature turns into a more normative question: What society do we want to live in and how can it be realized given the knowledge of the conditions of our existence? This implies a shift from the merely empirical to the normative, but without completely disregarding the former. Or, more precisely, it attempts to integrate the normative in the empirical because life itself – and therefore science as well – is not a distinct and objective entity separated from the symbolic, but also always a creative expression of the meaning we give ourselves and the world (Weber 2016, 9, 12-13). I would argue that it is this understanding of nature that would ultimately be more conducive to commons.

### 5.3. Autopoiesis and the Interdependent Co-Creation of Reality

As mentioned previously, the understanding of the natural world as a machine was developed during the Early Modernity by numerous thinkers, most notably René Descartes (1596-1650) and Isaac Newton (1642-1726). Here, René Descartes' dualism of mind and matter or *res cogitans* and *res extensa* is of central importance. This Cartesian dualism assumes that the realm of freedom is limited to the mind while the sphere of material reality remains unfree and determined (Des Chene 2001). With the aid of Isaac Newton's mathematical understanding of the natural laws that underlie all of material reality, the entire universe was ultimately conceived as a clock-like machine, determined by its laws (Dolnick 2011). In this dualistic worldview, the mind receives the semi-divine position of a director who is not tainted by the laws of nature and can, or rather should, control the machine. For individuals, this implies the mastery of the spirit over the desires of the body; for society, it means the rule of those with insight into the underlying laws of nature and society over the ignorant and passionate masses; and for individuals' relationship to nature, it implies the imperative to subdue (and exploit) the natural world according to one's supposedly higher needs and desires. The claim I am making here is that to realize a democratic and sustainable society, we need to overcome this problematic dualism.

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expected defection to be the most likely response; when told they were playing the Kommuna [Community; LP] Game, they expected cooperation to be the most likely response. [...] [T]he effect of expectations regarding other's choices on own choices depended on the name of the game, and thus on the way the participants construed the game. The result of these tendencies over successive rounds, in which defection begot defection and cooperation was sustained only when it was mutual, was inevitable; that is, first-round responses tended to dictate later-round responses, and as a consequence, overall rates of cooperation—especially mutual cooperation— were significantly higher in the Community/Kommuna Game than in the Wall Street/Bursa Game" (Lieberman et al. 2004, 1182).

For this reason, let us now turn to a new understanding of the natural world that has been in development by different philosophers and biologists at least since the beginning of the 20<sup>th</sup> century. These intellectuals include, for example: the pragmatists Charles Peirce (1839-1914) and George Herbert Mead (1863-1931), the neurophysiologist Warren S. McCulloch (1898-1969), the social scientist Gregory Bateson (1904-1980), the chemist Ilya Prigogine (1917-2003) and the biosemioticists Thure von Uexküll (1908-2004), Thomas Sebeok (1920-2001) and Jesper Hoffmeyer (1942\*). This new understanding of nature became more popular during the 1970s through the work of Chilean biologists Humberto Maturana (1928\*) and Francisco Varela (1946-2001) and since then through the works of Fritjof Capra (1939\*) and Stuart Kauffman (1939\*). The development of this new paradigm in biology is often compared to the shift in physics from Newtonian mechanics to quantum mechanics, Einstein's general theory of relativity and thermodynamics in which the subject and the object are no longer understood as independent entities (Weber 2014, 18, Capra and Mattei 2015, 42).

On a similar line of thought, most noted authors, and most prominently Maturana and Varela, argue that the understanding of life must also include an understanding of how human knowledge of life (cognition) biologically arises (Maturana and Varela 1980, 1987). Although not stated in these terms, Maturana and Varela initially take two steps simultaneously to understand this problem: One is in line with the phenomenological tradition of Maurice Merleau-Ponty, acknowledging that the mind as embodied and part of the natural, material world (Merleau-Ponty 2001); the other step is made with the semiotics of Charles Peirce and other linguists, acknowledging that all forms of knowledge are socially constructed signs that not only interpret but also constitute or shape reality (Hoffmeyer 2008, 32). Here, knowledge of the world is neither regarded as a form of representation or correspondence of signs and their objects (signifier and signified), nor as a subjective, biological Idealism (Hampe 2007, 112) in which the subject merely projects their ideas and concepts onto reality or the "thing-in-itself". Instead, the process of knowing is best understood in the terms of Charles Peirce as a relational and interwoven process of differentiation, interpretation and co-creation of the world through signs. This implies that a "thing-in-itself" does not exist independently but is created through its symbolic and material relations with other

entities (Hoffmeyer 2008, 33). For Peirce, this process of interpretation consists of a dynamic, triadic relationship between a sign, an object and an interpretant (Kilstrup 2015). This semiotic understanding thus demonstrates the two-sided character of the same reality: The social constitution of the self and the material interconnectedness of the subjective with its objective surroundings. Or, more precisely, humans are understood as biological beings that socially conceive and construct themselves through their symbolic self-referential differentiation from and interpretation of their environment. Therefore, the dualism that is often assumed in Western thought does not exist “in reality” but is created through a process of embodied cognition based on symbolic signs that delineate the separation between mind and matter, individual and society and, finally, between culture and nature.

The generality of Peirce’s semiotics, in turn, lay the foundations we need to broaden the concept of embodied cognition to all living beings. Similarly to humans, all organisms actively constitute themselves as a differentiated unity, interpret the information from their environment through chemical or, in Peirce’s terms, indexical and iconic signs and act accordingly in order to survive. Many philosophers and biologists recognize this sensory cognition in all other forms of life (Bak 1997, Kelso 1995, Goodwin 2001, Narby 2006). This process of sensory cognition is understood as the self-organization or dynamic self-reproduction of organisms or, in the words of Maturana and Varela, as autopoiesis. Here, the process of self-organization must be understood as a material process of self-reproduction through internal signaling. Weber and Varela explain in a co-authored article *Life after Kant: Natural purposes and the autopoietic foundations of biological individuality* (2002) that autopoiesis is

“a circular process of self-production where the cellular metabolism and the surface membrane it produces are the key terms. Thus an autopoietic system – the minimal living organization – is one that continuously produces the components that specify it, while at the same time realizing it (the system) as a concrete unity in space and time, which makes the network of production of components possible” (Weber and Varela 2002, 115).

In general terms, autopoiesis or self-organization must therefore be understood as a departure from a linear and mechanic conceptualization of life in which natural laws and genes determine the actions of organisms. Instead, through signaling, internal feedback



loops provide a “nonlinear interconnectedness of the system’s components” (Capra 1996, 85) which can be understood as a network. As Fritjof Capra explains in his book *The Web of Life*:

“Since all components of an autopoietic network are produced by other components in the network, the entire system is *organizationally closed*, even though it is *open* with regard to the flow of energy and matter. This organizational closure implies that a living system is self-organizing in the sense that its order and behaviour are not imposed by the environment but are established by the system itself. In other words, *living systems are autonomous*. This does not mean that they are isolated from their environment. On the contrary, they interact with the environment through a continual exchange of energy and matter. But this interaction does not determine their organization – they are *self-organizing*” (Capra 1996, 167-8; emphasis added)

Both the partial independence from their environment and the internal feedback loops enable organisms to create “new structures and new modes of behaviour in the self-organizing process” (Capra 1996, 85). In the jargon of biosemiotics, this is generally understood as semiotic freedom (Hoffmeyer 1993, 52-67) and is more generally understood as adaptation in the Darwinian theory of evolution. Yet, while adaptation in non-human beings is normally understood as a random and intergenerational phenomenon, it is argued in this line of thought that change can occur in a non-random manner within the lifetime of an organism (Strohman 1997, 195). Or, in simpler terms: “Creatures change their forms without changing their genes” (Strohman 1997, 198).<sup>46</sup>

In contrast to the widespread differentiation in Western philosophy between material reality as the realm of unfreedom and that of the human mind as the realm of freedom, here, all living beings are understood to possess minimal intelligence, subjective agency

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<sup>46</sup> In more technical language, this can be understood as a shift in biology from genetic determinism to epigenetic open-feedback networks. In the paradigm of genetic determinism, evolution occurs through random reconfiguration of genetic information. In contrast to this, Strohman argues in his article on the “coming Kuhnian revolution in biology” of 1997: “Epigenetic networks have been described as cellular neural networks and, given their great complexity and *openness to environmental signals*, most probably use a (nonlinear) logic and set of rules quite different from the comparatively linear rules needed for completing the genetic sequence of events. This comparison also emphasizes feedback from epigenetic networks to the genome; feedback that includes changing the patterns of gene expression. This change in pattern of gene is accomplished by enzymatic changes in chromosome structure and by ‘marking’ sections of DNA chemically *without changing the genetic code in any way*. What is changed is the *accessibility of genes to expression pathways*. But the *decisions to mark or not to mark are in the epigenetic [open feedback networks; LP] and not the genetic pathway*. The details of epigenetic biology [...] are well known and thoroughly covered in the literature” (Strohman 1997, 197). The important point here is that these changes are non-random, altered morphology, “which is then subsequently filtered by natural selection” (Strohman 1997, 197; emphasis added).

and autonomy. This subjective agency is grounded in the assumption that all organisms strive to maintain themselves. This energy directed towards self-preservation implies that not only do all organisms have interests and values (e.g. staying alive and reproducing the species), but they also have a minimal sense of self (e.g. the maintenance of one's own life) (Weber and Varela 2002, 116-119). This is not to say that organisms are self-conscious, but rather that they are sentient beings with a minimal, embodied sense of self. The foundation of an organism's autonomy therefore does not lie in self-reflexive thought, but in sentience, which enables organisms to give meaning to the world through their embodied and intentional interpretation thereof (Weber 2016, Narby 2006, Hoffmeyer 1993, Kauffman 1993). For biosemiotist Jesper Hoffmeyer, this process of embodied cognition is inherently linked to the capability of living beings to anticipate the future. To explain this issue with some simple examples, I quote Hoffmeyer in full here:

“Quite generally, living systems have evolved a capacity for making anticipations: they must decide when to grow and when to withhold growth, when to move, when to hide, when to sing, and so on, and this way of adjusting the behaviour depends on a capacity to predict the future at least to some limited extent. For instance: is it likely the sun will shine or not, is it likely that little flies will pass by if I make my web here, will the predator be fooled away from the nest if I pretend to have a broken wing etc. Of course, in most cases it will be the instinctual system of the animal rather than the brain that makes this kind of prediction, but the logic is the same: the animal profits from its ability (whether acquired through phylogeny or through ontogeny) to identify trustworthy regularities in the surroundings. And most – if not all – trustworthy regularities are indeed relations. For instance, the relation between length of daylight and the approaching springtime that tells the beech when to burst into leaf; or the play of sun and shadows which tells the spider where to construct its web; or the relation between clumsy movements and an easy catch that tells the predator which individual prey animal to select, and thus tells the bird how to fool the predator away from its nest” (Hoffmeyer 2008, 34-5).

Considering these basic interpretative interactions of all living beings with their environment, organisms should then not be understood as “genetic machines” but as “materially embodied [cognitive; LP] processes that bring themselves forth” (Weber 2013, 30). Or, to put it somewhat tautologically: Self-organization implies that living organisms are alive.

The implications of this are twofold. Firstly, not all cognitive processes in living beings are self-conscious but are, rather, based on a type of sensory and sentient cognition. For humans, this is obvious when we consider that most of our actions are not performed entirely consciously but rather through a tacit knowledge of the body (i.e. habits). This was demonstrated most clearly by the famous Libet experiment in 1979 in which a hand movement was initiated through a reaction of the nervous system while the self-conscious decision to act in this manner followed shortly afterwards (Libet 1999). While this experiment has often been interpreted as proof for the non-existence of human free will – or the free will as a type of *ex post* veto possibility –, this new interpretation of self-organization through sensory cognition would, however, imply that autonomy does not merely lie in the self-conscious determination of the body, but more fundamentally in the embodied, sentient cognition of the body itself (Libet 1985). In other words, humans' relationship with the world is thus, in its most fundamental form, not one based on knowledge and rationality, but is instead physical and emotional – or, in the words of sociologist Hartmut Rosa, a relationship of resonance (Rosa 2016).

Secondly, this understanding of nature provides a more general, non-dualistic understanding of reality. Here, the mind is not understood as a distinct thing in itself, but as a process that arises out of relationships. By conceiving cognition as sentient consciousness, “mind” arises through a process of sensory interactions of the organism's components and in its interaction with the environment. The mind – and all other “things”, for that matter – are therefore constituted as separate and independent entities through their linguistic and symbolic categorization in the interactive process communication and reflection. In this sense, it must also be noted that the environment or nature does not merely exist as a thing in itself, but as relationships between different organisms that give each other meaning and bring each other about. The pragmatist philosopher George Herbert Mead expresses this idea quite well in his book *Mind, Self and Society from the Standpoint of a Social Behaviorist*:

“It is a difficult matter to state just what we mean by dividing up a certain situation between the organism and its environment. Certain objects come to exist for us because of the character of the organism. Take the case of food. If an animal that can digest grass, such as an ox, comes into the world, then grass becomes food. That object did not exist before, that is, grass as food. The advent of the ox brings in a new object. In that sense, organisms are responsible for the appearance of whole sets of objects that did not exist before. The distribution of meaning to the organism and the environment has its expression in the organism

as well as in the thing, and that expression is not a matter of psychical or mental conditions. There is an expression of the reaction of the organized response of the organism to the environment, and that reaction is not simply a determination of the organism by the environment, since the organism determines the environment as fully as the environment determines the organs. The organic reaction is responsible for the appearance of a whole set of objects which did not exist before. [...] The organism, then, is in a sense responsible for its environment. And since organism and environment determine each other and are mutually dependent for their existence, it follows that the life-process, to be adequately understood, must be considered in terms of their interrelations.” (Mead 1967, 129-30)<sup>47</sup>

Here, individual entities such as the ox and the grass are neither fully independent nor completely dependent on each other, but rather exist in interdependent relationships in which they enable each other to be brought forth. This insight repeats the previously discussed notion that living creatures are not determined by natural laws and their environment. Instead, living beings are integrated in a process of relational and interdependent co-creation of nature and meaning. This is a basic insight of a systemic understanding of nature that can then be applied to “higher” or more complex forms of socio-ecological organization.

## 5.4. Ecosystems, Abundance and Natural Commons

In order to apply the notions of autopoiesis and interdependent co-creation to humans, we need to scale up our understanding of these concepts from single organisms to populations, entire ecosystems and the “web of life” in general. Although Maturana and Varela originally only developed the concept of autopoiesis as a function of cellular networks and other “minimal autopoietic systems”<sup>48</sup> (Capra and Luisi 2014, 306), there have been attempts to transfer this understanding of life to more complex organisms and living systems including the social domain. Here, it might be helpful to elaborate on the basic concepts of organism and living systems. As Fritjof Capra and Pier Luigi Luisi explain in their book *The Systems View of Life*:

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<sup>47</sup> It can be noted that while George Herbert Mead discusses the agency and meaning of animals, he nevertheless denies them a “self” which, however, is to be distinguished from our notion of subjectivity based on sentient cognition. Mead explains that “We can distinguish very definitely between the self and the body. The body can be there and can operate in a very intelligent fashion without there being a self involved in the experience. The self has the characteristic that it is an object to itself, and that characteristic distinguishes it from other objects and from the body” (Mead 1967, 136). It is therefore self-reflexive consciousness that creates the self as an object.

<sup>48</sup> According to Capra and Luisi, minimal autopoietic systems include “simple cells, computer simulations, and the autopoietic chemical structures, or ‘minimal cells’, created recently in the laboratory” (Capra and Luisi 2014, 306).

“All living systems are networks of smaller components, and the web of life as a whole is a multilayered structure of living systems nesting within other living systems – networks within networks. *Organisms* are aggregates of autonomous but closely coupled cells; *populations* are networks of autonomous organisms belonging to a single species; and *ecosystems* are webs of organisms, both single-celled and multicellular, belonging to many different species.” (Capra and Luisi 2014, 306; emphasis added)

In other words, we can differentiate between three types of multicellular living systems: Individual organisms, populations and societies and ecosystems. Because all living systems are ultimately made up of cells, I would agree with Capra and Luisi that “all living systems, ultimately, are autopoietic” (Capra and Luisi 2014, 306). The understanding of populations as self-organizing basically revolves around the idea that populations can reproduce themselves by continuously adjusting to and co-creating their eco-system. Here, the survival of individual organisms and specific populations is embedded within a broader ecological setting in which individual entities play a possibly minor yet significant role in the reproduction of entire ecosystems. This systemic approach to understanding life provides us with a better understanding of interdependencies in nature and requires us to revise many basic concepts that we have adopted from biology and applied to economics and politics. Furthermore, this understanding of living systems provides us with a concept of “natural commons” and a commons-based eco-law as Andreas Weber, Fritjof Capra and Ugo Mattei have developed.

In order to understand this transformation in conceptual frameworks, let us begin with one of the most fundamental assumptions in Malthusian and Neo-Darwinist interpretations of nature and economics: The competition of individuals over scarce resources for their survival. This assumption can be understood as one of the core elements of “bioeconomic metaphysics” and lays the foundation for one of the core functions of markets: The efficient allocation of scarce resources through market competition (Robbins 1932). This basic concept of scarcity and the competition over these resources has been popularized by the idiom “there is no such thing as a free lunch” by Robert Heinlein (1966), Milton Friedman (1975) and many others.<sup>49</sup> As we

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<sup>49</sup> In the OnlineLibrary of Economics and Liberty (econlib.org), economist David R. Henderson explains, for example, that he begins every class with the “Ten Pillars of Economic Wisdom”, the first of which is “There ain’t no such thing as a free lunch” (TANSTAAFL). He then supposedly tells students that “[e]conomic resources are scarce, and, therefore, if we get more of one, there has to be less

have already seen in our discussion of the open and competitive free market, according to this logic, one's existence is secured through accumulation which, ironically, increases scarcity through the depletion of resources needed by oneself and other beings. This antagonistic competition is not only conceived as a struggle between individuals but also as a struggle between entire populations or "nations" – and against one's environment. Not only do people strive to accumulate more and more resources, but they also strive to incessantly increase the size of their population to preserve the existence of their exclusive gene pool. As we have already discussed, the underlying assumption here is that all living creatures are biological consumption machines determined by their egotistical genes. Here, the only strategy of survival is perpetual growth. It is interesting to note that not only is freedom undermined by the biologically determined egotistical drive to perpetually grow, but also by the decrease in people's chances of survival because of the destruction of their ecosystem. If growth were the only genetic program of life, it can be assumed that living creatures would have wiped themselves out long ago simply by devouring each other and their environments.

However, while this notion might be biological, it is based on the logic of atomistic entities and therefore neglects the more recent insights of an interrelated and systemic understanding of biology that we have previously discussed. The notion disregards the interactive communication that occurs within an individual organism and the processes of interdependent co-creation between organisms and their ecosystems. In this sense, it neglects the capabilities of individuals and populations to adjust their patterns of actions not only to secure their own existence, but also to maintain the metabolic reproduction of the entire ecosystem. This is not to say that individual organisms or populations must have knowledge of the entire ecosystem that they exist in, but it is to be assumed that they can adjust their long-term consumption and reproductive patterns in accordance to signals that they receive from the ecosystem in order to secure their long-term existence. Obviously, this can include destructive strategies of parasitic growth but must also include strategies of symbiogenesis and mutual symbiosis which are based on the basic fact that the long-term existence of one being depends on the long-term existence of other beings. This is clearest considering the example of the bacteria in one's bowels that I provide food for and that, in turn, enable me to digest my food; or the trees that

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of another. What are economic resources? It's a little circular: economic resources are defined as scarce resources. [...] There are a few non-scarce goods, which economists call 'free goods'" (Henderson 2014).

provide oxygen for animals to breathe; or the rabbits that provide food for foxes. This is what George Herbert Meade meant when he spoke of organisms' reciprocal responsibility for the conditions of each other's existence.

To develop a better understanding of these other strategies of interdependent survival in network systems, we must integrate the other central premise of the Neo-Darwinist narrative: Scarcity. While I would agree that resources on planet earth are limited, this does not mean that resources must also be scarce. The objective limit of resources is best understood with the law of conservation that basically states that the total quantity of energy (including mass) remains constant over time in a closed physical system. Energy can therefore not be created *ex nihilo* but can only change its form (Hosch 2017). In contrast to this objective limit, scarcity is a phenomenon based on social organization and perception. As Hardin himself acknowledged, scarcity only occurs when the demand of some good exceeds the existence or reproduction thereof. According to Hardin, scarcity is therefore increased through population growth and the possibility of the unlimited accumulation of resources. Ironically, however, by perceiving existing resources to be scarce, accumulation strategies are pursued to secure one's existence, ultimately increasing the scarcity for others – and, in the long term, also for oneself, due to the depletion of the resource. Again, we observe the creation of reality from the categories that we perceive and thus understand nature. We will discuss the creation of scarcity in more detail later, but as we see, the central question that we must answer is therefore one of how to transform limited resources into relative abundance and freedom. As I will argue later, that implies the transformation of our social arrangements from those based on negative rights, individual private property and open and competitive markets to interdependent rights and commons property arrangements. In order to do this, however, we must shift our understanding of planetary limits from one based on scarcity to one based on sufficiency and abundance.

To manage this, it would seem helpful to return to the work of Andreas Weber who develops a notion of abundance in nature in relation to what he calls “natural commons” or, more specifically, the process of “natural commoning”. In Weber's words,

“Nature, understood as a creative process of interacting, embodied subjects, can serve as a model for an economic concept of the commons. Basic structures and



principles of ‘natural commoning’ – self-organizing, dynamic, creative – have been the basis of biospheric evolution” (Weber 2013, 37).

In contrast to the scarcity narrative, Andreas Weber argues that the concept of commons is based on the assumption of a general and relative abundance in nature. This is a central point that Weber emphasizes:

“Resources in nature are not scarce. Where they become so, they do not lead to a creative diversification, but to an impoverishment of diversity and freedom. The basic energetic resource of nature, sunlight, exists in abundance. A second crucial resource – the number of ecological relationships and new niches – has no upper limit. A high number of species and a variety of relations among them do not lead to sharper competition and dominance of a ‘fitter’ species, but rather to richer permutations of relationships among species and thus to an increase in freedom, which is at the same time also an increase of mutual dependencies. [...] In old ecosystems where solar energy is constant, as in tropical rainforests and high oceans, this brings forth more niches and thus a greater overall diversity. The result is an increase of symbioses and reduced competition. Scarcity of resources, experienced as the temporal lack of specific nutrients, leads to less diversity and the dominance of few species, as for example in temperate coastal mudflats” (Weber 2013, 27).

In contrast to the scarcity narrative, the source of all of life originates from an over-abundant resource that literally falls from heaven like manna: Sunlight. As is well-known, sunlight is *the* key source of energy for life on earth that enables plants to synthesize carbon dioxide from the air and water and minerals from the soil. This process of photosynthesis, in turn, “nourishes almost all of the living world directly or indirectly” (Campbell and Reece 2002, 176). In this sense, sunlight can be understood as a central source of energy that is provided to all living beings as an abundant gift.

Aside from sunlight, Weber also mentions another resource that exists in abundance in nature: “the openly available source code of genetic information” (Weber 2013, 39). Here, genetic code is not understood as an exclusive good that is protected and reproduced “privately” by competing individual species. Instead, it is a good that is open to all and shared by many. Here, genetic data is understood as an open-source commons. Similar ideas have been developed in Stuart Kauffman’s concept of a biological “order

for free” (Kauffman 1995, 71-92) and Marcello Barbieri’s notions of “code biology” (2015) and “evolution by genomic flux”<sup>50</sup> (Barbieri 2003, 58). In Weber’s words:

“DNA has been able to branch into so many species only because all sorts of organisms could use its code, tinker with it and derive combinations that were meaningful and useful to them. This is also the way *Homo sapiens* came about [...]. Some 20 percent of our genome alone consists of former viral genes that have been creatively recycled” (Weber 2013, 39).

According to Weber and other authors, it is not the selfish gene that dominates in nature, but the existential desire to share, copy and diversify genetic information – within and beyond one’s own species. In contrast to the survival of the fittest, Maturana and Varela understand this notion of evolution in *The Tree of Life* as “structural drift”, which merely appears *a posteriori* to the observer as being “selected” by the environment (Maturana and Varela 1987, 102-3).<sup>51</sup> Here, evolution should be understood not as a process of selection in which individual genetic codes optimize and assert themselves against others, but rather as a process of “free” exchange and recombination of genetic information. Survival is thus not secured through protection and domination, but rather through (unconscious) collective participation in the

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<sup>50</sup> Marcello Barbieri explains: “Other phenomena – such as *unequal crossing-over*, *DNA slippage* and *gene conversion* – proved that the genome is actually a turbulent superstructure in which genes are in a continuous state of flux. The Mendelian behaviour of genes is only a crude approximation of the truth, good enough for many practical purposes but not for a real-life understanding of the *fluid genome*. This brings us back to the possibility of a third exception to the Hardy–Weinberg theorem, i.e. to the possible existence of a third mechanism of evolution based on non-Mendelian heredity. And since the new mechanism would be a direct result of gene turbulence, a good name for it could be *evolution by genomic flux*” (Barbieri 2003, 58).

<sup>51</sup> As Varela and Maturana write: “In fact, we have no unified picture of how the evolution of living beings occurs in all its aspects. There are many schools of thought that seriously question understanding evolution by natural selection; this view has prevailed in biology for more than sixty years. Whatever new ideas have been bruited about in terms of evolutive mechanisms, however, those ideas cannot discount the phenomenon of evolution. But these *will* free us from the popular view of evolution as a process in which there is an environmental world to which living beings adapt progressively, optimizing their use of it. What we propose here is that evolution occurs as a phenomenon of structural drift under ongoing phylogenetic selection. In that phenomenon there is no progress or optimization of the use of the environment, but only conservation of adaptation and autopoiesis. It is a process in which organism and environment remain in a continuous structural coupling” (Maturana and Varela 1987, 115). Or, in more poetical and anthropomorphic terminology: “Evolution is somewhat like a sculptor with wanderlust: he goes through the world collecting a thread here, a hunk of tin there, a piece of wood here, and he combines them in a way that their structure and circumstances allow, with no reason other than that he is able to combine them. And so, as he wanders about, intricate forms are being produced; and they are composed of harmoniously interconnected parts that are a product not of design but of natural drift. Thus, too, with no law other than the conservation of an identity and the capacity to reproduce, we all have emerged. It is what interconnected us to all things in what is fundamental to us: to the five-petal rose, to the shrimp in the bay, or to the executive in New York city” (Maturana and Varela 1987, 117)

adaptive diversity of life forms. In this sense, aside from sunlight and the genetic code, diversity itself must also be considered as another vital and abundant resource for life that provides ever more possibilities for other beings to secure their interdependent existence.

To understand this notion of diversity as a means for survival, we must turn to another basic concept in this theory: That it is not competition, but rather “gift-giving” and mutually interdependent “networking” that underlies the life cycles of ecosystems. In this sense, Andreas Weber argues that nature’s resources exist in relative abundance and that they are also provided to other living beings as gifts. The most obvious examples of resources being provided as gifts are those previously mentioned: Sunlight, air, water, soil, genetic information and biological diversity. Here, it could be argued that the energy of these resources is given to plants “for free” or as a gift which then transform and conserve the energy through photosynthesis, which then, in turn, can be consumed by other beings. Andreas Weber describes this process,

“As there is no property in nature – there is no waste. All waste products literally are food for some other member of the ecological community. At death every individual offers itself as a gift to be feasted upon by others, in the same way it received the gift of sunlight to sustain its existence. There remains a largely unexplored connection between giving and taking in ecosystems in which ‘loss’ is the precondition for generativity” (Weber 2013, 39).

The fact that there is no property in nature is obvious because plants and animals do not exist in symbolic legal arrangements.<sup>52</sup> Nevertheless, this is not to say that there should not be any property arrangements in society. Instead, the point that Weber is making is that the transfer of energy from one organism to another depends neither on trade nor on competition, but is simply passed on as a gift to other living beings. Put in a larger ecological context, the concept of gift-giving can thus be illustrated with the food cycle in which energy is passed on from one organism to another in a more or less reciprocal manner. Fritjof Capra portrays the food cycle in his book *The Web of Life* in the following manner:

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<sup>52</sup> In this sense – and in relation to the abundance and accessibility of resources such as sunlight and genetic code – Weber writes, “Nothing in nature can be exclusively owned or controlled; everything is open source” (Weber 2013, 39).

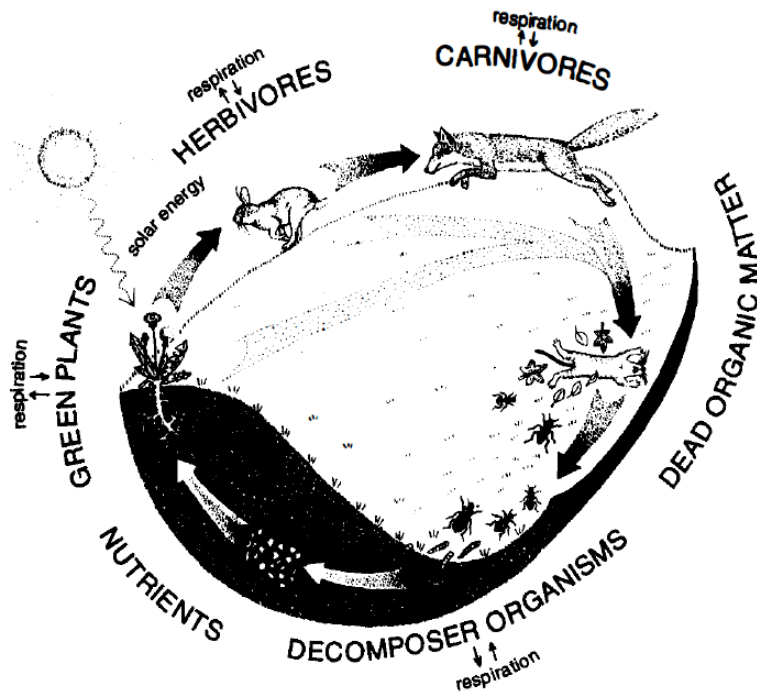


Figure 1: A cyclical portrayal of a food web (Capra 1996, 179)

This understanding should be contrasted with the linear and hierarchical understanding of food chains as it is often portrayed in schoolbooks such as, for example, in the classical textbook *Biology: A Global Approach* (Campbell et al. 2015) by Neil Campbell et al.:

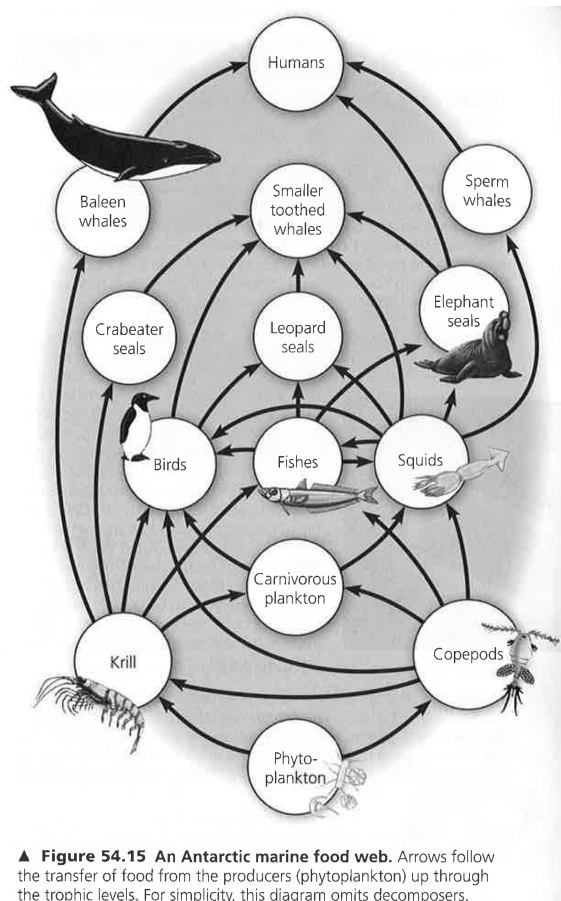


Figure 2: Hierarchical portrayal of a food web (Campbell et al. 2015, 1290)

As we see here, the food web is portrayed in a fairly linear and hierarchical manner. It is interesting to note that Campbell et al. mention the decomposers that transform the energy of carnivores and omnivores into energy for plants in the caption, but that they do not include them in the figure. For this reason, the food chain with humans at the top of the hierarchy (fig. 3) remains hierarchical and incomplete. It could be argued that these two depictions of how energy is distributed in the ecosystem tacitly convey notions of how nature is structured: Linearly, hierarchically and anthropocentrically or cyclically, reciprocally and eco-centrally.

This interpretation of nature does not imply that life is always harmonious and benign. Such an interpretation would obviously be an all-too idealistic understanding of nature. However, as Darwin himself acknowledged later in life (Darwin 2009, 70-106) and as Pjotr Kropotkin also argued over 100 years ago, survival is not merely based on competition and warfare but also on interdependencies, reciprocity and “mutual aid” (Kropotkin 1998). The main point of this new interpretation of nature is that animals and populations are not conceived in isolation from other organisms and their

environment, but rather in mutual interdependencies. This shifts our understanding of evolution from one focused on competition to one based on communication in web-like networks. The existence of a specific population is thus not conceptualized in a dualistic logic of “us versus them” but as a dynamic and sometimes stressful relationship of interdependency. It can therefore be argued here that life only comes into being through the existence of the other – through its dependency on the ecosystem that it lives in. This implies a biological primacy of reciprocal “birth-giving”, understood as a “natural gift economy” and a “natural commons” over the Darwinian focus on struggle, competition and “nature red in tooth and claw.” According to Weber,

“From the standpoint of enlivenment nature is a commons economy consisting of subjects that are continuously mediating relationships among each other – relationships that have a material side, but also always embody meaning, a sense of living and the notion of belonging to a place” (Weber 2013, 36).

Here, the natural common of the gift is not a specific property arrangement, but it should be understood as a mode of existence and, more importantly, as the precondition for one’s existence – including one’s ability to compete with other beings. In this sense, the existence of “the other” is the precondition of an organism’s own existence. As Weber explains:

“The biosphere consists of a material and meaningful *interrelation of selves*. Embodied selves come into being only through others: the biosphere critically depends on cooperation and ‘interbeing’ – the idea that a self is not possible in isolation and frenetic struggle of all against all, but is from the very beginning dependent on the ‘other’ – in the form of food, shelter, mates and parents, communication partners. *Self is only self-through-other*. In human development this is very clear, as the infant must be seen and positively valued by its caretakers to be able to grow a healthy self.” (Weber 2013, 32; emphasis added)

Again, this interdependency of life does not imply that nature is one harmonious symphony but that the dynamic processes of mutual adaptation and evolution result from this interdependency. In this sense, Weber speaks of the biosphere being “paradoxically cooperative” in that symbiotic relationships emerge out of “antagonistic, incompatible processes: matter/form, genetic code/soma, individual ego/other” (Weber 2013, 32; emphasis omitted).<sup>53</sup> Weber emphasizes that this paradoxical unity forces

<sup>53</sup> The dynamic unity of these fundamental paradoxes of life can be compared to the wave-particle paradox in quantum physics.

entities to form precarious and provisional solutions to their way of life. Here, existence comes into being through “transitory negotiations of several incompatible layers of life” (Weber 2013, 32).

This implies that nature does not exist in a stable equilibrium but rather in a dynamic process of balancing diverse desires and needs between different organisms within an ecosystem. This does not imply that all organisms exist in a struggle of “all against all” in which one species or population will “win.” Instead, this concept implies that ecosystems have functional “dissipative structures” (Capra 1996, 168-9) or “balancing levels” in which the change of one factor of the ecosystem inherently brings about other changes in it. Andreas Weber writes,

“All systems have a ‘balance level’ of health. If disruptions or damage force the individual, community or species to experience too much stress, then the resilience of the whole will weaken. The ‘balance level’ is not a fixed threshold, but more of a zone for absorbing what Varela and Maturana call ‘disruptive perturbation.’ Stress that exceeds the structural resilience of the system means that the system cannot produce a ‘surplus of meaning’ – i.e., it cannot provide its gifts on other parts of the ecosystem. The degree of tolerable stress can be very difficult to observe and even more difficult to predict. A second important point is that the existence of a ‘balance level’ does not mean static equilibrium or ‘homeostasis’; it is a dynamic negotiation among the system’s elements about exactly how far it can stretch to accommodate the stress. Tolerable stress, which includes minor and major catastrophes, can actually be a stimulation as long as it remains within ecotone levels (an ecotone is the patchy fringe between two or more specific areas). Beyond that, disruptions can become devastating for the whole, eventually destroying it. On the larger system level, this destruction will lead to a new equilibrium, but not with the same players as before.” (Weber 2013, 38-9).

Here, the dynamic balance that an ecosystem maintains can be interpreted as an inherent principle of networked self-organization. Using the concepts of relative abundance and mutual interdependency in ecosystems, Weber then also reminds us that an ecosystem never grows in a material sense. Thus, Weber concludes that “nature is running a steady-state economy – that is, an economy where all relevant factors remain constant in relation with one another” (Weber 2013, 27). This notion of the metabolic reproduction of the ecosystem in a dynamic yet steady state economy will be relevant for our later discussion of a commons-based economy. For now, however, let us turn to



the implications of these insights for human freedom and democracy based on this ecological and systemic understanding of reality.

## 5.5. Empathy, Cooperation and Common(s) Reality

In this discussion of self-organizing organisms, populations and ecosystems, it is important to note that the degree of autonomy of organisms and networks varies greatly depending on the complexity of the specific multicellular living system. Here, the main difference between human and the more-than-human living systems is that humans and their social systems possess the ability not merely of interpreting their environment through indexical and iconic signs, but also of interpreting through symbolic signs.<sup>54</sup> This capability does not merely enable humans to give things “names”, but also enables self-reflection in which the “*process of naming is itself nameable*” (Bateson 1979, 185). In turn, these self-reflective capabilities provide greater “semiotic freedom” (Hoffmeyer) for human beings. In the words of George Herbert Mead:

“Mind arises in the social process only when that process as a whole enters into, or is present in, the experience of any one of the given individuals involved in that process. When this occurs the individual becomes self-conscious and has a mind; he becomes aware of his relations to that process as a whole, and to the other individuals participating in it with him. [...] It is by means of reflexiveness – the turning-back of the experience of the individual upon himself – that the whole social process is thus brought into the experience of the individuals involved in it; it is by such means, which enable the individual to take the attitude of the other toward himself, that *the individual is able consciously to adjust himself to that process, and to modify the resultant of that process in any given social act in terms of his adjustment to it*” (Mead 1967, 134; emphasis added).

As Mead emphasizes, the ability to reflect on the process of thought and action is not something divine or transcendental but emerges from the processes of the central nervous system. Furthermore, this ability provides humans with a greater range of freedom than other living beings. For Mead, the seemingly simple ability to stop and reflect on one’s cognitive processes (i.e. thinking) opens a space in one’s mind for altering the interrelations of symbolic signs and intended action. Or, in Mead’s own words, “When [one; LP] stops, mind, we say, is freed” (Mead 1967, 122).

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<sup>54</sup> Despite this very general and far-reaching statement, there are experiments that demonstrate that animals use basic abstract concepts. One such experiment shows how ducklings can differentiate between “same or different” (Martinho III and Kacelnik 2016).

Nevertheless, Mead never tires to emphasize that this process of reflection is not merely an individual activity, but also an inherently social one. In other words, language and, therefore, mind only occur through the interaction both with one's environment and with other humans. Self-consciousness and the self is therefore not atomistic and self-dependent, but created through the material and social world that it is embedded in. Mead explains,

“What goes to make up the organized self is the organization of the attitudes which are common to the group. A person is a personality because he belongs to a community, because he takes over the institutions of that community into his own conduct. He takes its language as a medium by which he gets his personality, and then through a process of taking the different roles that all the others furnish he comes to get the attitude of the members of the community. Such, in a certain sense, is the structure of a man's personality. [...] *The structure, then, on which the self is built is this response which is common to all, for one has to be a member of a community to be a self*” (Mead 1967, 162; emphasis added).

Biologically, this primordial cooperative sociability is explained by the development of mirror neurons and humans' deeply ingrained empathetic sensibility.<sup>55</sup> In a general sense, mirror neurons enable the mind to grasp another mind “as if” the emotions, thoughts and behavior of the other were one's own (Damasio 2003, 115). According to Rizzalotti and Sinigaglia, however, this process should not be understood as reflexive but instead as immediate and empathic: “The instantaneous understanding of the emotions of others, rendered possible by the emotional mirror neuron system, is a necessary condition for the empathy which lies at the root of most of our more complex inter-individual relationships” (Rizzolatti and Sinigaglia 2008, 190-1). Mirroring the other in a direct, first person and pre-reflexive manner enables people to empathize with other humans – and other living, sentient beings. This basic insight that humans are not simply reflexive and rational but also inherently social and empathic beings corresponds with much recent research in other scientific fields (de Waal 1996, 2009, Fehr and Schmidt 2006, Kolm and Ythier 2006, Tomasello 2009, Rifkin 2009, Bowles

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<sup>55</sup> Mirror neurons were discovered in the early 1990s in Parma, Italy, by a team of scientists led by Giacomo Rizzalotti, who were analyzing the brains of macaque monkeys and their cognitive abilities to plan movements. Here, they discovered neurons in the F5 region of the frontal cortex that were not only fired before the monkey had grabbed a peanut, but also when a researcher took some peanuts. Soon afterwards, they studied human brains and found a similar reaction: Neuronal activity was detected in an individual when they saw other humans act without acting themselves (Rifkin 2009, 82). From the point of these insights, a burst of research was initiated that supported an embodied and social theory of mind in which not reason, but emotions – and, more specifically, empathy and cooperation – stand at the center of human existence.

and Gintis 2011, Baron-Cohen 2011, Batson 2011, Jensen et al. 2014, Rosa 2016, 246).<sup>56</sup>

The important point here, however, is that mirror neurons enable a pre-reflexive, empathic and primary sociality that promotes the development of self-reflexive individuality in and with others. In this sense, Rizzolatti and Sinigaglia write that

“The clarification of the nature and reach of the mirror neuron systems then provided us with a base from which to investigate the cerebral processes responsible for the vast range of behaviour that characterizes our daily existence, and *from which we weave the web of our social and interindividual relations*” (Rizzolatti and Sinigaglia 2008, 192-3; emphasis added).

This understanding of mind emphasizes the ecological principle of interdependence and co-originality of the self and the other, which, in this case, must also be interpreted as the individual and society.

In a general sense, we could therefore say that mirror neurons bridge minds and weave them into a network of “common mind[s]” (Pettit 1993). They provide humans with an elementary and underlying shared experience and a shared reality. Here, we are reminded of Elinor Ostrom’s “interdependent situations” (E. Ostrom 1998, 1) that constitute most of people’s existence. As Rizzolatti and Sinigaglia explain:

“The mirror neuron system and the selectivity of the responses of the neurons that compose it, produce a *shared space of action*, within which each act and chain of acts, whether ours or ‘theirs’, are immediately registered and understood without the need of any explicit or deliberate ‘cognitive operation’” (Rizzolatti and Sinigaglia 2008, 131; emphasis i.o).

Mirror neurons generally enable individuals to develop a shared language, shared thoughts and shared, collective actions through the imitation of the other. Michael

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<sup>56</sup> Randall Collins, for example, confirms this insight in his book *Violence: A Micro-sociological Theory* (2008): „[H]umans have evolved to have particularly high sensitivities to the micro-interactive signals given off by other humans. Humans are hard-wired to get caught in a mutual focus of intersubjective attention, and to resonate emotions from one body to another in common rhythms. This is an evolved biological propensity; humans get situationally caught up in the momentary nuances of each other’s nervous and endocrinological systems in a way that makes them prone to create interaction rituals and thus to keep up face-to-face solidarity. I am making more than the banal point that humans have evolved with large brains and a capacity for learning culture. We have evolved to be hyper-attuned to each other emotionally, and hence to be especially susceptible to the dynamics of interactional situations. The evolution of human egotism, then, is far from primary; it emerges only in special circumstances, for the most part rather late in human history“ (Collins 2008, 26-7).

Bratman echoes this insight in his notion of shared intentions, which “consists in a public, interlocking web of appropriate intentions of the individuals” (Bratman 1999, 9). Or, as Mead explains, “[T]he beginnings of the process of communication [is found; LP] in the co-operative process, whether of reproduction, caring for the young, or fighting” (Mead 1967, 234). It can thus be said that cooperation lies at the beginning of all individual development and is most clearly symbolized by parents caring for their children. Nevertheless, it must also be noted that this cooperation can be conflictual or competitive. Or, conversely, the basis of a competitive or conflictual relationship implies that two parties share a *common* reality – and that they are a result thereof. For if a reality was not primarily interdependent and shared, conflict could not even arise.

In another sense, we could possibly say that one’s mind does not exist “in one’s head”, but rather “out there” in one’s interactions with society and in the world. In the words of Mead, this is the “generalized other” that is incorporated and reproduced through mirror neurons and role-playing games (Mead 1967, 152-64). For this reason, we could not only argue that language, but also mind, thoughts and “reality” should be understood as an “irreducibly social good” (Taylor 1995) that people co-create and inherently share. However, this shared mind-language-reality is not merely limited to the social sphere but includes material reality as well. In this sense, Meade argues that “[c]onsciousness as stuff, as experience, from the standpoint of behavioristic or dynamic psychology, is simply *the environment* of the human individual or social group” (Mead 1967, 111; emphasis added). Subjective mind is therefore always objectified in its existing social and natural conditions.

What was previously understood as the nature commons now flows over into a type of social commons that lays the foundation of both our social realities and our individualities. In his article *Reality as Commons*, Weber explains:

“The commons of reality is a matrix of relationships through which aliveness is unfolding in ecosystems and history. It conveys the aliveness of biological and human communities from a perspective of metabolic dependency, exchanges of gifts, and the entanglement of actors within their vectors of activity. Living participants bring each other into being by establishing relationships (metabolism, predator/prey relationships, social ties), thus producing not only their environments but their very identities. Thus, the commons describes an ontology of relations that is at the same time existential, economic and ecological. It emphasizes a process of transformation and identity formation that arises out

of a mutuality that is not only material, but also experienced [and symbolic; LP]” (Weber 2015).

From this perspective, all our interactions constitute our shared, common reality. The fabric of our very existence could thus be understood as a commons – a reality commons. This reality commons would obviously include conscious acts of sharing, but also walls, conflicts and war. Although these latter examples might be attempts to exclude, subdue or even eliminate the other, they would nevertheless constitute the common reality that people inherently co-inhabit and co-create – whether they like it or not. In this sense, it could even be said that this reality commons is the bedrock and horizon of the interdependent existence of humans and the more-than-human world.

While this concept of reality commons might appear to be too general and vague, it is clear that we must not confuse this notion of commons with Elinor Ostrom’s notion of common pool resources or common property arrangements. Instead, this understanding of commons goes beyond them and should, rather, be understood as a “way of entering into relationships with the world, both materially and conceptually” (Weber 2015). Moreover, this understanding provides us with the adequate concepts to demand that people should have the right and possibility to co-determine their shared common reality or their reality commons.

## **5.6. Ecological Freedom and Care**

As we see, this notion of a shared reality commons based on interdependent self-organization in ecosystems forces us to reformulate our original understanding of autonomy and democratic freedom with ideas discussed with David Held. David Held’s principle of autonomy was based on the individual’s capability and right to change its conditions of living. Although this is an advance to other notions of freedom in that it conceptualizes democracy as a form of living, it nevertheless understands autonomy as “the supreme value and derives universal environmental rights, duties and institutions from it” (Tully 2008a, 74). From our ecological understanding of reality, it is important to embed this principle of autonomy in the basic principles of ecology. Fritjof Capra, for examples, defines these principles as “interdependence, recycling, partnership, flexibility, diversity, and, as a consequence of all of those, sustainability” (Capra 1996,

304). In its most simple sense, this ecological reinterpretation of Held's autonomy principle provides us with a concept of an ecological, democratic freedom based on the self-organization of organisms within an ecological network of interdependencies.

Similarly, Andreas Weber understands autonomy as biologically embodied, which be conceived as "freedom-in-and-through-relation" (Weber 2013, 40). For interdependent ecological networks or "natural commons", this connotes that

"a multitude of different individuals and diverse species stand in various relationships to one another – competition and cooperation, partnership and predatory hostility, productivity and destruction. All those relations, however, follow one higher principle: Only behaviour that allows for the productivity of the whole ecosystem over the long term and that does not interrupt its capacities of self-production, will survive and expand" (Weber 2013, 37).

Thus, the relations of the individual with the entire ecosystem becomes central to our understanding of ecological freedom. Therefore, the important point is not simply the maximization of individuals' autonomy, but rather the co-determination and reproduction of the systemic socio-ecological conditions that enable individuals' freedom.

Here, we could mistakenly interpret individual freedom in an organic metaphor as the subjugation of the individual to the whole. This is a classical critique that states that holistic and organicistic concepts of life inherently lead to totalitarianism, as was the case with National Socialism (Harrington 1996). The understanding of ecological relationships defended here, however, fundamentally contradicts this totalitarian and hierarchical interpretation of social organicism. Totalitarian metaphors of an organic society have often been based on notions of Social Darwinism which, in turn, legitimated a hierarchical interpretation of nature and a society divided into charismatic leaders and sheepish followers. Only by suppressing one's individuality can the existence of the whole be secured. Contrary to this interpretation, the notion of interdependent ecological systems that has been developed here implies that self-organizing organisms and biological diversity are necessary for the functioning of the whole ecological network. Or, in the words of Weber, "The individual can only exist if the whole exists and the whole can only exist if individuals are allowed to exist" (Weber 2013, 32). Although

this definition goes in the right direction, I consider the notion of being “allowed to exist” to be somewhat problematic. Individual existence could be reduced to life in a prison cell or in Disneyland. The fundamental point in this ecological and systemic notion of freedom is that the *thriving* of individuals depends on a “healthy” society and on the premise that the flourishing of society depends on a healthy individual. We cannot have one without the other: The whole and its parts are interdependent and co-create each other. For this to happen, it is necessary to see both “the forest and the trees” (Moran and Ostrom 2005) in their interwoven relationships with one another. It is this systemic understanding that must complement and transform David Held’s notion of individual autonomy and democracy to make it more ecologically sound and open to a more far-reaching notion of commons.

First and foremost, this implies that the networked structures of living systems are not hierarchical. In simple terms, all organisms – including all people – are assumed to possess the ability to self-organize and it is assumed that all parts contribute to the interdependent process of the co-creation of the whole. The biological and physical realm of human reproduction and production is no longer conceptualized as the realm of necessity and unfreedom. Nevertheless, while humans possess the capability to reflect, reason and self-organize, they are dependent on the self-organization and well-being of other organisms, populations and their ecosystem at large. Therefore, humans are merely understood as one component in a larger, complex ecosystem. According to Weber, this concept of ecological freedom is what underlies the commons:

“The basic idea of the commons is therefore grounded on an intricate understanding of freedom and its relationship to the whole: the individual enjoys many options of self-realisation but the only viable ones depend upon the flourishing of the life/social systems to which she belongs. To organise a community between humans and/or non-human agents according to the principles of the commons means to increase individual freedom by enlarging the community’s freedom. Both expand together – and mutually through one another” (Weber 2013, 40).

Again, this is not to say that the relationship between the individual parts and the whole are harmonious. That would be a naïve and all-too optimistic interpretation of this mutual interdependency. Freedom should therefore be interpreted as a process of



continual communication and negotiation both with the necessities of material existence and between the individual parts and the whole. Thus, we could conclude that freedom is not only an in-and-through-relation, but, more precisely, individual freedom must be understood as being with, through and against the other.

In order to understand what this means, let us quickly summarize each term: With, through and against. “Freedom with” signifies people’s inherent common reality that they share and therefore co-determine – irrespective whether they have the political or legal right to co-determination. It emphasizes the co-origination of self and other and one’s dependency on the other. However, this dependency is positively connoted here because it is only with the other that one can realize common ends and satisfy common needs. Moreover, this relation highlights the intrinsic value of social interactions, collective action and convivial modes of being. In this sense, the principle underlying “freedom with” can be understood as the Kantian categorical imperative that all (rational) beings must each be considered as an end in themselves (Kant 2002, 45; 4:429), whereby we would replace the term rational with the term sentient, extending its sphere of relevance to all living beings and thereby possibly also ecosystems in general. In contrast, “Freedom through” denotes the utilitarian and instrumental character of relationships, in which people can use one another and their environment. We use people and things to realize certain ends that are either held in common or not. Both freedom “with” and “through” resemble a collective notion of positive freedom, understood as the ability to act collectively, and social freedom, understood as the ability to co-determine one’s conditions of existence. Finally, “freedom against” emphasizes that people have conflicting values and ends and therefore need to negotiate how these conflicts can co-exist without negating one another. While “freedom against” appears similar to negative freedom or “freedom from”, the latter is, in fact, a means to solve the conflict by excluding or – in its extreme case – negating the other. Instead, “freedom against” implies that conflicting interests and ends must be dealt with not through exclusion but, rather, through negotiation. This is not to say that all conflicting ends have a right to be realized, but rather that it must be negotiated which ends fulfill the reproduction of the whole and the flourishing of its parts better. In this sense, “with, through and against the other” are the fundamental criteria of ecological interdependent freedom. Lastly, it should be noted that these three notions must always be recognized simultaneously. While it is possible that one aspect is emphasized in certain

relationships, other aspects are accentuated in other relationships. One of these aspects cannot not be annulled from the definition of ecological freedom. As becomes clear, the negation of “with” would imply a purely instrumental and conflictual relationship with others. This comes close to the notion of negative freedom in which one’s atomistic and supposedly independent subjective rationality is defined as the cornerstone of society. The denial of either “through” or “against” would, in turn, lead to the subjugation of one’s individuality to the whole and thus negate one’s individual freedom. As we see, this notion of freedom aims at maintaining a dynamic tension between the parts and the whole while not falling into the traps of focusing on merely one aspect of its tripartite definition.

In this sense, I would say that ecological freedom emphasizes individuality without being either totalitarian or atomistic and solipsist. Ecological freedom emphasizes the importance of other living beings as a precondition for one’s own material existence and actual freedom. Thus, ecological freedom is always both embedded and embodied freedom. As Andreas Weber elaborates,

“The enlivened idea of freedom does not do away with the classical-humanistic [and liberal-negative; LP] account[s] of autonomy (as strictly biologicistic accounts do), but rather it limits its absoluteness to an ‘embodied relativity’. There is no such thing as individual freedom detached from the living world, and any attempt to claim it inevitably will violate the necessities of embodied life, of an organic being’s living needs. So from an Enlivenment viewpoint [ecological; LP] freedom (as enframed in constraint) is a natural process.” (Weber 2013, 40).

Here, freedom with, through and against is simply interpreted as a process of communication with one’s ecosystem instead of merely with one’s fellow human beings. This generally implies that people recognize that other organisms have an intrinsic right to exist and are the basis for our existence and the reproduction of the entire ecosystem which we co-inhabit (freedom with). Importantly, this would imply that we provide organisms, animals and ecosystems with legal rights that recognize this right to life and liberty of more-than-human life. Our notion of ecological freedom would, however, also imply that we can use these organisms and ecosystems to satisfy our needs (freedom through) while not negating the needs of the other (again, freedom with). Finally, this notion can suggest that we must somehow negotiate over conflicting ends and see to what extent these conflicting ends support the reproduction of the whole and the

flourishing of each individual part. How can this negotiation process between human and non-human organisms take place? On the one hand, this notion of ecological freedom should provide people with a point of normative orientation in their everyday interactions with the-more-than-human world. On the other hand, it should also provide people with the ability to file a suit in the name of the more-than-human world when the rights of certain organisms or ecosystems would be violated. Here, I must admit that it still remains unclear to me how the more-than-human world can be increasingly integrated into the legal framework not merely as an object, but also as participants in the democratic processes of law and policy making. One possibility would be to develop special methods of representation through the integration of scientists, environmentalists and the people who are directly working in and with specific ecosystems (farmers, fisher, forest rangers etc.), as developed by Bruno Latour in his notion of the “Parliament of Things” (Latour 1993, 2004). Despite the importance of these questions, we must discuss these ideas in more depth elsewhere.

This shift in understanding from an individualistic and anthropocentric understanding of freedom to a social and ecological notion forces us to rethink our basic ethical relation to other humans and to the more-than-human world. In general terms, the relationship to other humans and the more-than-human world should be interpreted as a resonant relationship of communication and negotiation. Furthermore, by recognizing the inherent interdependency of living systems, ecological freedom is neither based on the negative notion of non-interference nor on a utilitarian ethic of maximization for the greatest number. I would also argue that ecological freedom goes beyond Honneth’s previously discussed concept of social freedom that is based on (the struggle for) mutual recognition between humans. Instead, I would argue that ecological freedom is based on a care ethic – towards one’s fellow human beings and the more-than-human world. In this sense, I would use Joan Tronto’s classical definition of care that she developed in her book *Moral Boundaries: A Political Argument for an Ethic of Care* (1993). According to Tronto, care is

“everything that we do to maintain, continue, and repair our ‘world’ so that we can live in it as well as possible. That world includes our bodies, our selves, and our environment, all of which we seek to interweave in a complex, life-sustaining web” (Tronto 1993, 103).

Although care is often associated with the relationship between parents or, more specifically, mothers and their children, I would agree with Tronto that care is a more general principle that defines not merely ethics, but also rights and obligations. In this sense, it is important to emphasize that the care ethic implied here is not hierarchical and paternalistic but based on the recognition of others' equal capabilities and rights to self-organize. Ecological freedom based on a care ethic thus emphasizes the equal rights of all living beings to individual and interdependent action and the obligation to ensure the autonomy of all other living beings by caring for them. Caring does not, however, imply harmony and altruism (Tronto 2013, 32), but instead the negotiation of diverging interests and values with a basic interest for the other. This can also mean that there is oppositional conflict precisely because one cares for certain goods. Grounding our notion of freedom on an ethic of care implies that we break with the implicit "ethic" of self-interest in negative freedom. We would therefore shift our focus from the right of non-interference and the unlimited accumulation of wealth to the care for reproduction and flourishing of the constituent parts of the whole. By placing a care ethic at the foundation of our notion of freedom, I believe that we would ultimately be bringing life and freedom into alignment.

Here, someone might ask if we truly need a specific ethos for a specific legal framework. Simply put, my short answer to this is yes. The reason for this is that social institutions can only be maintained if they are also morally justified. Moral justification implies not only the approval of the existence of certain institutions (e.g. individual private property in land), but also patterns of both individual and collective action. With Hegel, I would argue that social institutions are not merely created through reason and contracts, but are brought about through ingrained patterns of action and habit which are, in turn, structured according to normative values of right and wrong. This is what Hegel generally refers to as "Sittlichkeit". We may found new institutions, but if we do not uphold them through ethical conviction and repeated actions, they will most likely disappear again. In this sense, we could also say that (democratic) institutions of society are no better than the people that live in that specific society. From this perspective, it is our norms, our ethics and our corresponding actions that must bring about the social institutions we want.

On a more general level, by placing care at the center of our relationship to ourselves, other humans and the more-than-human world, we transform fundamental notions of politics, law and property. In general terms, this shifts our understanding of politics from struggle and conflict to one of mutual, reciprocal care. Furthermore, it shifts our focus from rights to responsibilities. According to Joan Tronto, this is a central aspect of a “caring democracy”, as she explains:

“Most importantly, rather than being a set of principles from which one deduces proper action, a feminist democratic ethic of care begins by envisioning a series of caring practices, nested within one another. The broadest of these nested practices are those that pertain to society as a whole [...]. The goal of such practices is to ensure that all of the members of the society can live as well as possible by making the society as democratic as possible. This is the essence of ‘caring with.’ While living in a democratic manner is not the only goal of care, or of human life, in a democratic society it is the goal of democratic caring practices. Thus, *democratic politics should center upon assigning responsibilities for care, and for ensuring that democratic citizens are as capable as possible of participating in this assignment of responsibilities.* The task of a democratic politics is to affix responsibility, and as we come to recognize the centrality of care for living a decent human life, then the task of democratic politics needs to be much more fully focused upon care responsibilities: their nature, their allocation, and their fulfilment” (Tronto 2013, 30; emphasis i.o.).

By interpreting freedom and democracy in this manner, we could say that democracies that clearly separate the private from the public and that are coupled with self-regulating markets limit the possibilities for individuals to care for the socio-ecological problems that determine their common reality. As we have already seen, the self-limitation of politics to the realm of the state has created a democratic deficit that can also be interpreted as a structural caring deficit in modern societies. These legal institutions stop people from taking responsibility and caring for social and ecological problems because the root of these problems is ultimately situated in the private realm which is largely shielded from democratic interference – be that by the state, civil society or communities. Furthermore, the existing politics of care imply that the responsibilities of care are unequally distributed: While some people are overburdened with classical “private” and often unpaid care work (e.g. childrearing, caring for the sick and elderly, social work etc.), few people have the somewhat limited possibility to care for common affairs (e.g. politicians, environmentalists) and others are largely freed from care work (e.g. people pursuing accumulative “economic” activities). Here, while some

people have a “free pass” to accumulate and extract wealth, the rest of society must do the care work to keep the socio-ecological organism alive. As we see, legal arrangements define and distribute care work and the according responsibilities within society (Tronto 2013, 32-3). In this sense, it is not simply of central importance in an ecological notion of freedom to define and demand rights for humans and the more-than-human world (e.g. the right to clean water, to education etc.), but also to demand a fair distribution of caring possibilities and obligations that enables the reproduction of freedom for all (Held 1995, 203). We will discuss later how this care ethic can transform our notion of property rights and labor. Before turning to property arrangements, however, I would like to further develop an understanding of democracy that is based on our notion of ecological freedom. To do this, we will now develop Fritjof’s and Capra’s notion of eco-law with reference to James Tully’s work on the “civic tradition” of democracy which provides us with an important stepping-stone for an ecological democratic theory of the commons.

## **5.7. The Civic Tradition of Ecological Democracy and Commoning**

In his book *On Global Citizenship* (2014), James Tully differentiates between the civil and civic traditions of democracy. Similarly to Fritjof Capra and Ugo Mattei, he recognizes that the civil tradition is problematic because it limits people in their capabilities to change their legal frameworks to adequately deal with and care for social and ecological problems. To understand the civic tradition of democracy fully, it might, therefore, be helpful to shortly discuss what Tully understands as the civil tradition of democracy.

### **5.7.1. The Civil Tradition of Democracy**

According to James Tully, the civil tradition is based on a dualistic understanding of society that differentiates between individuals and their representatives (*demos*) on the one hand and between citizens and their legal framework understood as the constitutional rule of law (*nomos*) on the other (Tully 2014, 11). This understanding is similar to our understanding of protective, legal (minimal) and formal, positive (medium-range) democracy. Here, the “constitutional rule of law is the first condition of citizenship”, which is “defined as a status (state or condition)” (Tully 2014, 11). Rights and obligations are *granted* to the individual by the hierarchical authority of the state. Society is divided into state-individual, state-market or state-civil society dichotomies

that are found in the writings of Hobbes, Locke and Kant. Tully lists four tiers of citizenship rights and duties within this civil tradition: (1) Civil liberties, understood as private autonomy or, with reference to Benjamin Constant, the liberty of moderns; (2) representative government and the liberty of ancients, understood as the possibility to participate in public autonomy; (3) social and economic rights, understood as substantive yet rather weak rights to education, housing and health; and finally, (4) modern minority rights (Tully 2014, 12-17). As Tully emphasizes, the “modern liberty to participate in the private economic sphere and not to be interfered within it; the right to own property and enter into contracts” (Tully 2014, 13) lies at the center of the first tier civil liberties. In this sense, the state exists primarily to pacify our supposedly antagonistic and conflicting, egotistical interests. Again, we confront the state-individual dichotomy which must also be interpreted as a dichotomy of subjective, egotistical or, in Christian terminology, “fallen” individuals and objective, robust and “universal” laws. Or, in Kantian terms, it is a rational and universal legal order that can be realized even by a “nation of devils” (Kant 2006, 90).<sup>57</sup> As becomes clear, this concept of civil liberty turns the social and ecological ontology developed in this paper on its head by assuming independent and conflicting individuals as primary, the interference of others as cumbersome and participation in social activities and common affairs as voluntary. Here, democracy and processes of democratization are “equated with tier-one civil liberties (neoliberal marketization) and a short list of democratic rights (primary elections)” (Tully 2014, 29). In this dualistic model, self-organization is not understood as an activity of democratic self-governance but rather as a “spontaneous” function of

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<sup>57</sup> In the words of Immanuel Kant: “Establishing a state, as difficult as it may sound, is a problem that can be solved even for a nation of devils (if only they possess understanding). The problem is as follows: ‘To form a group of rational beings, which, as a group, require universal laws for their preservation, of which each member is, however, secretly inclined to make an exception of himself, and to organize them and arrange a constitution for them in such a way that, although they strive against each other in their private intentions, the latter check each other in such a way that the result in their public conduct is just as if they had no such evil intentions.’ It must be possible to solve such a problem. For it is not precisely how to attain the moral improvement of the human being that we must know, but rather only how to use the mechanism of nature on human beings in order to direct the conflict between their hostile intentions in a people in such a way that they compel each other to submit themselves to coercive laws and thereby bring about the condition of peace in which laws are in force. In the case of actually existing, however imperfectly organized states one can also observe this, in that in their external conduct they already closely approximate what the idea of right prescribes, although an inner morality is certainly not the cause of this conduct (and it should not be expected that a good state constitution would arise from an inner morality, but rather conversely that the good moral education of a people would follow the former). Hence reason can use the mechanism of nature, in the form of selfish inclinations, which by their nature oppose one another even externally, as a means to make room for reason’s own end, legal regulation, and to thereby promote and secure, insofar as it is within the power of the state to do so, both internal and external peace.—This is the essence of the matter: Nature wills irresistibly that right ultimately attains supreme authority”(Kant 2006, 90-91).



the self-regulating market as described by Hayek. As we have discussed previously in reference to the self-regulation of the market, the primacy of individual negative freedom and market competition lays heavy constraints on democratic freedom. The problem is that the civil tradition does not recognize the ecological, democratic freedom that would enable all people to participate in this process of multilayered, institutional self-organization and adaptation. Tully discusses this problem:

“The civil tradition makes a fundamental distinction between the institutional rule of law and the citizen activities that take place within the boundaries of these institutional settings. The institutionalized rule of law exhibits a systemic or functional quality of formality and independence from the agents who are subject to it and act within its boundaries. This picture is encapsulated in the mantra, ‘rule of law not of men’. The features of institutionalization and rationalization that establish the independence of the rule of law from the rule of men and women consist in the definite rules, procedures and training of the institutional offices, the hierarchical, command–obedience relationships among the members, the specialized division of labour, the separation of knowledge from use, reflexive monitoring and the systematic application of coercion to align behaviour with rules. That is, it is the non-democratic and procedural character of the relationships within an institution that give it its formality and independence from the informal rule of men. The language of governance is replaced by that of administration, management, control, discipline, procedure, direction and monitoring. [...] *The roles of humans seem to disappear*” (Tully 2014, 55; emphasis added).

Here, we are reminded of Vincent Ostrom’s critique of the monocentric order. Yet, in contrast to Vincent, Tully sees similar problems in representative democracies based on the civil tradition that uphold an abstract, formal and independent rule of law. Aside from a hierarchical and technocratic character of these social arrangements, it is important to note Tully’s conclusion that “humans seem to disappear”. I find this point to be central because it is precisely in the name of individual negative freedom that the civil tradition is often so fiercely defended. Yet, from Tully’s perspective, the universal and abstract rules of property that intend to defend individual freedom simultaneously suggest the disappearance thereof. How can this be? Similarly to Hayek’s understanding of a dethroned democracy, political issues are delegated to experts who uphold the rule of law and implement adequate policies to maintain the functioning of the social body. As Capra and Mattei note, “Since its foundation by Hugo Grotius, international law has remained based on individualized Cartesian building blocks – legal persons in competition with each other within a mechanistic, depoliticized vision of law” (Capra

and Mattei 2015, 117-118). Similarly to Hermann Heller's notion of authoritarian liberalism, Capra and Mattei describe this institutional arrangement as a type of legal absolutism. The individual is subjugated to the forces of the self-regulating open and competitive market and is not a participant in the democratic self-organization of its common, institutional and economic reality. The active and conscious participation in and care for the self-organization of society is severed. Due to this democratic deficit, we can interpret the civil tradition to be politically disempowering. Furthermore, the apathy that results therefrom can turn into both hate towards established elites and hope for strong (authoritarian) leaders who will "set things straight". The tragic irony, however, is that these new charismatic leaders are, themselves, subject to the structural constraints of the market and must often adhere to the "objective" market forces under a new political banner.

### **5.7.2. The Civic Tradition of Democracy**

In contrast to this civil model, James Tully then develops an alternative understanding of citizenship that overcomes these dualistic problems and that can be interpreted as a democratic theory of our ecological concept of freedom. Tully calls this form of citizenship "civic", in which the liberty of ancients is prioritized over the liberty of moderns. According to Tully, a fundamental difference between these two traditions is that while civil citizenship defines "a status within an institutional framework backed up by world-historical processes and universal norms, the diverse [civic; LP] tradition looks on citizenship as *negotiated practices*, as praxis – as actors and activities in contexts" (Tully 2014, 35). As we see, the civic tradition of democracy is very similar to Axel Honneth's notion of social freedom. Similarly to our social and ecological interpretation of the subject, Tully also assumes an embodied individual that brings about institutions through its interactive relationships with others:

"The diverse [civic; LP] tradition reverses this modernist, institutional orientation and takes the orientation of citizens in civic activities in the habitats they are enacted and carried on. Institutionalization is seen and analysed as coming into being in unpredictable and open-ended ways out of, and in interaction with, the praxis of citizens – sometimes furthering, strengthening and formalizing these activities while at other times dispossessing, channelling, dominating, cancelling, downsizing, constraining and limiting" (Tully 2014, 35-6).

Here, citizenship is not granted and guaranteed by states but, instead, brought about by collective action and social freedom. In contrast to first and second-tier freedoms in the civil tradition,

“[t]he crucial kind of freedom is thus neither the freedom from relationships of interdependency (negative freedom) nor the freedom of acting in conformity with allegedly ideal and universal legal relationships that ‘we’ impose on ourselves (positive freedom). It is the proto-civic and civic freedom of negotiating and democratizing in/over the always less-than-ideal relationships in which we live and breathe and become who we are. The only guarantee of freedom and democracy is, not surprisingly, the daily cooperative practices of democratic freedom in webs of relationships and on the fields of possibilities they disclose” (Tully 2014, 52-3).

As we see, civic freedom is thus neither merely understood as negative or positive freedom but as action in, with and against others. Furthermore, political participation is not simply an opportunity, but rather an act of being free. Tully explains,

“The civic citizen manifests the freedom of participation. The free citizen is free in engaging in civic activities and, *eo ipso*, making these activities free. Civic freedom is not an opportunity but a manifestation; neither freedom *from* nor freedom *to* (which are often absent or suppressed), but freedoms *of* and *in* participation, and *with* fellow citizens. The civic citizen is not the citizen of an institution (a nation state or international law) but the free citizen of the ‘free city’: that is, *any* kind of civic world or democratic ‘sphere’ that comes into being and is reciprocally held aloft by the civic freedom of its citizens, from the smallest *deme* or commune to global federations” (Tully 2014, 39; emphasis i.o.).

Translated back into our terminology, civic activities are a manifestation of ecological freedom with, through and against the other. In this sense, Tully’s civic theory of democracy must be understood as inherently participatory. We must, however, be precise in defining participation. Firstly, participation is neither to be limited to the realm of the state nor to be understood as something extraordinary, as if political engagement occurs after work and in our free time. Instead, participation must be understood as basic and constitutive of our interactions. All activities are manifestations of participation in life, and it thus depends on everyday patterns of action that bring about different relationships and institutions. Or in other words: We cannot *not* participate in life and politics; the apolitical citizen is also inherently political. Political

participation in everyday life can thus be more or less free. And by consciously acting in a self-organized manner, we make ourselves *even freer*.

Second, and as mentioned previously, participation is not something granted, but rather something realized through (collective) action and thus literally “en-acted”. Participation is thus not to be limited to actions *within* existing institutions (e.g. voting). Here, Tully defines four general types of civic activities, depending on the precise field of action one finds oneself in: (1) The range of activities available in and recognized by an existing government; (2) a certain range or “Spielraum” of “playing the civic game differently”; (3) the negotiation of governance relationships themselves; and (4) confrontation with the unjustified structural limits of the specific field (Tully 2014, 48-9). In this sense, Tully understands the processes of civic action as the participation in and transformation of existing relationships and institutions. As Tully explains,

“The civic tradition simply does not have this disenfranchising disjuncture problem. By starting from the premise that any community subject to and affected by a relationship of governance that harms a public good is for that very reason a citizenry with the civic right to hold the responsible party accountable through civic negotiations, it links democratic organization, networkization and civicized institutionalization directly to the specific power relationship at issue and at the most effective sites” (Tully 2014, 82).

The right to participate in the democratic co-determination of one’s common reality is therefore not something that is provided for by institutions, but instead something that is acted upon when people feel negatively affected by existing circumstances. Through this collective action, they, in turn, alter and co-determine the social arrangements in which they live. In this sense, Tully concludes that “to *civicize* governance relationships is – eo ipso – to ‘*democratize*’ them” (Tully 2014, 49; emphasis added).

With this differentiation of the fields of action, we can ask ourselves to what extent this civic tradition of democracy is to be equated with direct democracy. Firstly, it must be clarified that this model of democratic law-making is not to be confused with a Marxist model of direct democracy in which there is no separation of powers (Held 1987, 116). Although separation of powers is rarely discussed in Tully’s civic model of democracy, he does emphasize that the existence of institutionalized procedures is of fundamental importance for the existence, stability and reproduction of democracies. Tully explains:

“This is not to deny the importance of institutionalized procedures. It is rather to observe that the way a person ‘grasps’ a procedural rule is not itself a procedure but a negotiated practice. [...] Both our understanding of the rule and the actual rule itself are immanent in the negotiated practices that cannot be circumscribed. *The living rule of law is the pattern of interplay and interaction of the negotiated practices.* This is the immanent or manifestation thesis of the civic rule of law. The unfolding of the rule of law, no matter how institutionalized and rationalized, is internally related to the indeterminate negotiated practices of the law. In a word, civic citizens are ‘constructivists’” (Tully 2014, 56-7; emphasis added).

The point Tully is making here is that the separation of powers and the enforcement of procedures is not something that societies can simply rely on, because they, too, are created through practice and subject to conflicting interpretations and negotiations.

According to this interpretation, I would argue that Tully’s understanding of an institution is very similar to George Herbert Mead’s which he defines in his social behaviorist terminology as “developments within, or particular and formalized manifestations of, the social life-process at its human evolutionary level” (Mead 1967, 262). This interpretation of social arrangements supports the idea that the cultivation of a specific ethic manifests itself in specific social patterns of actions (e.g. utility maximization or an ecological care ethic). In turn, the negotiated conflict over patterns of action and social arrangements can support or impede the realization of certain notions of justice that are consolidated in existing institutions. As we can see, this notion clearly contradicts the aforementioned Kantian notion of legal institutions which should be constructed for a “nation of devils”. A few examples might illustrate this: If, for example, a large majority of a people believes slavery to be legitimate, it is difficult if not impossible to legally abolish slavery. If a people desires to eat large amounts of cheap meat, it is probably very difficult to prohibit intensive factory farming. If a large percentage of a people demands the unlimited freedom to accumulate wealth, then it will be impossible to limit accumulation. If a society believes that competition brings out the best in us, it is highly improbable that one will be able to create a legal structure that fosters cooperation. It is irrelevant here, however, whether the majority of society actually owns slaves or has the ability to accumulate large amounts of wealth. It might be the case that only a small minority actually participates in such practices. But if the belief that these practices are morally legitimate and ethically commendable is

widespread, it will nevertheless be accepted that only a few people in the population are lucky enough to pursue these activities.

Conversely, however, this does not imply that an altruistic morality of all individuals is necessary to create just and democratic institutions. Rules are precisely created for the limitation of actions of individuals that conflict with existing laws. If everyone acted altruistically, rules would not be necessary; if no one abided to the law, specific laws could not be enforced and would most likely not exist in the first place. Civic activities thus create institutions, which, in turn, determine the structure of social patterns of action and the possibilities of future civic activities. As becomes clear, this concept of civic action echoes the principles of co-creation previously discussed in our non-dualistic, ecological understanding of humans and nature. Here, humans are responsible for the co-creation of their material and social reality. Or, in the words of Harry Boyte, Elinor Ostrom and et al.: “A citizen is the co-creator of the worlds to which she or he belongs” (Boyte et al. 2014, 207). This is what Tully means by an “immanent or manifestation thesis” and the constructivism of the civic rule of law (Tully 2014, 57).

### **5.7.3. Eco-law, Commons and Commoning**

Interestingly, Tully’s notion of the civic activity of law-making is very close to what Fritjof Capra and Ugo Mattei describe as an ecological paradigm of law and commons. For them, a shift to an ecological understanding of law can only be realized through a “culture and genuine civic engagement” that “overcomes both hierarchy and competition as ‘correct’ narratives of the legal order” (Capra and Mattei 2015, 134). In other words, an ecological conception of law must overcome state-market or state-individual dualisms and be based on another conception of nature: The networked system. Similar to Tully’s understanding of civic democratic rule as a “network of relationships of negotiated practices” (Tully 2014, 56), Capra and Mattei also argue that an ecological understanding of law “seeks to capture the complex relationships among the parts and the whole – between individual entitlements, duties, rights, power, and the law – by using the metaphor of the network and of the open community sharing a purpose” (Capra and Mattei 2015, 134). All three authors argue that law is not to be understood as a neutral and objective science that is merely constructed and implemented by experts and specialists, but should, instead, be understood as a craft or practical art (Tully 2014, 56) and the “*nonprofessional* exercise in the sharing of

collective meaning” (Capra and Mattei 2015, 135; emphasis added). That being said, Capra and Mattei go so far as to argue that in an ecological order, “the community [or network; LP], not the individual or the state, is sovereign” (Capra and Mattei 2015, 140). According to them, however, this does not imply that the state should whither away, but, instead, that local and global communities and networks should possess the power to perpetually change and adapt their legal structures according to changing circumstances and needs. In this sense, Capra and Mattei write,

“Likewise, the new ecolegal order must allow collective agency to emerge [...], reclaiming the law as a collective tool of political transformation. Such participatory decision making, both political and economic, is a crucial aspect of the need to put the legal system at the center of, not the individual physical or legal person, but the ‘whole’ – communities, networks, qualitative dimensions of relationships, with direct access to and stewardship of knowledge, law, and resources” (ibid., 164).

The state and its monopoly of power to enforce laws does not disappear, therefore, but is “reclaimed” and democratized through civic activities.

While Capra and Mattei place the term of community at the center of their theory, the concept of community is not to be limited to a local geographical unit. Due to this misunderstanding, Elinor Ostrom’s cases have often been criticized for requiring too high levels of homogeneity and for therefore being very limited in their scale. In contrast to a close-knit notion, the concept of community developed here should rather be understood as networks of people pursuing common (or conflicting) interests on local, regional or global levels. Nevertheless, it must be emphasized that all communities are situated in local contexts – and in nature (Capra and Mattei 2015, 164). The concept of a networked community thus rejects the nature-culture divide and always understands itself as a form of collective action within specific socially co-constructed landscapes and environments. This contextualization, however, does not impede people from connecting with others on the other side of the world. The main point is the pursuit of similar goals and the exchange of information and resources, be that local farmers developing an international seed bank or the international effort to protect local water resources from privatization. For this reason, James Tully calls this local-global networking “‘glocalization’ and the networkers ‘glocal citizens’ because they are grounded in and hyperextend the civic features of local citizenship” (Tully 2014, 73).



The “glocal” community is thus not simply to be understood as a “higher” cosmopolitan order but as a network of people that are engaged in concrete practices and conflicts that take place on the ground of and within specific social systems (Tully 2008b, 84). If higher levels of coordination and regulation are realized, then it most likely will be in the form of democratic network governance by those most affected people. These networks would then be the arenas of negotiation and would provide the “foundations for an international legal order based on independent, legally organized commons” (Capra and Mattei 2015, 144).<sup>58</sup>

That being said, Capra and Mattei acknowledge that communities can either be “giving, hospitable, and open to guests” or can be “selfish, closed and bigoted” (ibid., 164).<sup>59</sup> However, the recognition of the interdependence of living beings underlying this ecological legal paradigm should – at least theoretically – provide a basis for a care ethic which cultivate such inclusive values. In this sense, Capra and Mattei argue that such ecological communities are “never closed” (ibid., 164). With reference to the self-organizing principles of organisms, they also state that communities “depend on energy and nutrients from their environment, and on occasional disturbances for their evolution” (ibid., 164). The question whether such communities are inherently open or closed is a highly complex and often ethically delicate issue. With reference to limited, rival goods, I would argue with Elinor Ostrom that complete openness is problematic if people aim to effectively deal with free-riding and the overuse of resources. This could be understood as an inherent inner and outer boundary of commons, and it distinguishes an open-access common with a rigid and unregulated institutional framework from democratically regulated commons arrangements. Here, I would maintain that resources should remain closed to people pursuing maximization and privatization strategies. This would then, for example, place the rights of indigenous people to resources over those of colonists and corporations (Weis 2015). Conversely

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<sup>58</sup> For a more detailed discussion of how such a legal framework for commons would look like, see Weston and Bollier’s *Green Governance: Ecological Survival, Human Rights, and the Law of the Commons* (2013).

<sup>59</sup> Jeremy Waldron, for example, argues similarly in his article *Community and Property – For Those Who Have Neither* (2009): “Although ‘community’ can sound like a warm, inclusive word, real-world communities (be they nations, municipalities, neighborhoods, or clusters of condominiums) characteristically define themselves by reference to an array of excluded “others” and erect fences and patrol borders to keep these others out” (Waldron 2009, 189). Although I would agree with Waldron that real-world communities are often exclusionary, I would contest that they always are or that the principle of exclusion is an inherent principle thereof. The arrangement of a community depends on a shared ethic, whether inclusionary or exclusionary, and, in more formal cases, on a specific constitution that structures its openness and closed-ness.

and in line with Elinor Ostrom's 3<sup>rd</sup> design principle<sup>60</sup>, I would, however, also argue that the inclusion of "others" is based on the general right of affected people to access vital resources and to co-determine the institutions that govern these resources. Aside from local residents, this could or rather should also include, for example, refugees, immigrants, transients or homeless people who are in need of aid for their survival and are dependent on hospitality (Waldron 2009).<sup>61</sup>

While the principle of affectedness is one way to determine the inclusion into a specific networked community, another – and possibly more straightforward – means of community formation is the pursuit of common interests and common goods. For Tully, this provides a people with both a common purpose for their civic activities and an ethos of caring. In Tully's words:

"A civic activity also has another important aspect, the telos or good towards which the activity is oriented and which the activity upholds and manifests. It gives the activity its civic character or ethos. A civic telos is thus a 'civic good'. Modern citizenship is 'egocentric', oriented towards the protection of the liberty of individuals to be free from interference and to be free to exercise their autonomy in the private sphere (tier-one rights) or in the official public sphere (tier-two rights). In contrast, diverse citizenship in both citizen and governance/citizen relationships is ecocentric and human-centric (or relationship-centric in both cases). Civic activities are oriented towards *caring for* the public or 'civic goods' of the correlative 'city': namely, the community and its members bound together by citizen/governance and citizen relationships in interdependency relationships with nonhuman animals and the environment they bear as inhabitants of the natural habitat" (Tully 2014, 64).

While Tully speaks of civic common goods, Capra and Mattei explicitly speak of commons. Nevertheless, by placing common purposes and commons at the center of their theories of civic democracy and eco-law, the authors break with the tradition of "deontological liberalism" (Sandel 1986) as propagated by Immanuel Kant and John Rawls (Rawls 1988). According to Michael Sandel, deontological liberalism assumes a plurality of conflicting individual conceptions of the good and therefore places the right

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<sup>60</sup> Elinor Ostrom defines the third design principle in her book *Governing the Commons* in the following manner: "3. Collective-choice arrangements: Most individuals affected by the operational rules can participate in modifying the operational rules" (Ostrom 2008a, 90).

<sup>61</sup> This is, for example, in contrast to "expats", who are not in such a destitute situation. Obviously, "affectedness", "vital resources" and thus inclusion are highly contested concepts and can therefore not be determined in abstraction or in advance, but are defined in the practices of civic collective action and negotiation.

(the law) over the good (a specific notion of the good life).<sup>62</sup> While Kant argues that the right should be attained through the use of one's transcendental reasoning and finally through contract, Rawls maintains that the right can be defined in the thought experiment of the veil of ignorance and in an overlapping consensus. Instead, in this civic tradition and eco-legal paradigm, the civic good is understood as an inherent part of all institutions and communities. Justice is brought about not merely through reason and contract, but, first and foremost, through pre-contractual collective practices.

According to Tully, these common goods are “multiplex” and “subject to ongoing democratic negotiation” (Tully 2014, 64). For him, they include diverse democratic goods such as civicizing relationships, character development and conviviality and more substantive goods such as “caring for the environment, economic self-reliance, mutual aid, fair trade, equality among citizens and so on” (Tully 2014, 64). While Tully's list of these goods remains somewhat general and vague, Capra and Mattei step back and claim that law itself must be understood as a common (Capra and Mattei 2015, 160) that results from collective action or “commoning”. They explain that “[L]aw is always a process of ‘*commoning*,’ a long-term collective action in which communities, sharing a common purpose and culture, institutionalize their collective will to maintain order and stability in the pursuit of social reproduction” (ibid., 14). Here, the civicizing activities as described by Tully can be equated with what Capra and Mattei refer to as commoning. According to Capra and Mattei, the “fundamental organizational principle of commoning everywhere is that of caring, duty, reciprocity, and participation” (ibid., 156). Commoning thus implies the process of collectively bringing about common goods in a manner that ensures the future reproduction of the good. This is ensured through the inclusion of those affected people in both the definition and adaptation of its institutional framework on the one hand and in the fair use and enjoyment of its benefits on the other.

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<sup>62</sup> Sandel explains, “society, being composed of a plurality of persons, each with his own aims, interests, and conceptions of the good, is best arranged when it is governed by principles that do not themselves presuppose any particular conception of the good; what justifies these regulative principles above all is not that they maximize the social welfare or otherwise promote the good, but rather that they conform to the concept of right, a moral category given prior to the good and independent of it” (Sandel 1986, 1).

So, what precisely *are* commons, based on this notion of civic collective action? It should be clear that this dynamic and process-oriented interpretation of commons goes beyond the definition of commons as presented by the Ostroms and other political economists. If we look back, commons are limited to common-pool resources which describe goods that are rival and where the exclusion of others is difficult (i.e. costly) in the classical, politico-economic definition. As we have already argued, these resources could, however, be organized as national, private or common property – each with their diverse institutional arrangements. An important insight we derived from that discussion was the fact that something that is held in common cannot be derived from the objective descriptive characteristics of an entity. Instead, the question whether something should be held in common or not is therefore not merely a question of an entity's characteristics but depends on the social institutions that constitute it. The characteristics of a good are, first and foremost, a question of whether people want to hold a specific good in common. In this sense, commons can be understood as a triadic relationship between resources, communities and norms/rules (Helfrich et al. 2010, 10). Nevertheless, this shift from the objective description of a good to social relationships and institutions remains dualistic and neglects the dynamic process of co-creation of reality through commoning. The existence of a common is thus not merely a descriptive or normative *question*, but, more importantly, a question of social *practice*. Capra and Mattei therefore emphasize that the activity of making something a common good can therefore not be separated from specific resources and goods (Capra and Mattei 2015, 153). Or, as historian Peter Linebaugh explains in this often-quoted citation:

“To speak of the commons as if it were a [pre-existing; LP] natural resource is misleading at best and dangerous at worst – the commons is an activity and, if anything, it expresses relationships in society that are inseparable from relations to nature. It might be better to keep the word as a verb, an activity, rather than as a noun, a substantive” (Linebaugh 2008, 255).

We must thus conclude that our previous question is somewhat misleading. We cannot simply say what commons *are*. That would assume that commons are objective things that exist independently from people. Such an understanding of commons would substantivize the concept and neglect both the normative and performative characters of commoning as a “vital determinant” of commons (Euler 2018). In this sense, commons scholar and activist Silke Helfrich states that “common goods don't simply

exist – they are created” (Helfrich 2012a). Hence, commons cannot be limited to what is traditionally known as common pool resources, but must be understood as a civic activity of self-organizing or commoning that both brings common goods about and democratizes their institutional frameworks. Commoning thus recognizes our shared reality as a common and enables people to care for their own well-being and the well-being of others according to the ecological principles of freedom.

## 6. Towards a Commons Theory of Property

After having laid the foundations for an ecological understanding of freedom and some preliminary remarks on a more profound notion of commons, I believe it is necessary to turn to a central question that has not yet been discussed in this investigation: The question of what a commons theory of property could look like. Generally put, this is of central importance because it would enable us to develop an understanding of property rights that is not based on exclusion, dominion and scarcity, but rather on access, democratic guardianship and relative, convivial abundance.

In order to develop such a theory, I will proceed as follows. Firstly, I will critically reflect the normative language of goods with reference to categorization of goods in the work of the Ostroms. In a second step, I will present a general argument for common property arrangements, based on the acknowledgement of common needs and the interdependent and conflictual satisfaction of these needs in shared resources. After these two introductory sections, I will turn to John Locke's famous labor theory of private property and critically reinterpret it from a commons perspective. Here, I will argue that we must shift our justification of property in three respects: firstly, we must replace property arrangements based on (self-)ownership with those structured according to guardianship. Secondly, I argue that the negative rights of non-interference must be substituted with the notion of non-domination. Lastly, I demonstrate that a commons theory of property must be based not the special rights of individual labor but more importantly on the general rights of interdependent needs. With this groundwork, I will then critically discuss John Rawls' influential theory of a property-owning democracy. Here, I will argue that Rawls' notion of predistribution provides us with a better understanding of positive access rights to resources, but must shift its focus from productive capital to the caring for material resources held in common. In a final step, I will shift my focus from so-called productive resources to consumption goods and maintain that certain consumptive goods also should be organized in the form of common property. Here, I will show that shared consumptive goods both decrease detrimental ecological impacts and simultaneously expand the access to goods for more people. Ultimately, this implies an increase in individual freedom, relative abundance and convivial modes of living.

## 6.1. The Normative Language of Goods

In order to explore and develop a commons theory of property, I would like to push the previous argument on commoning a bit further by focusing on the civic activity of self-organization from a linguistic perspective. As we have already discussed in relation to our understanding of nature, the way we describe and categorize things constitutes or co-creates reality. In this sense, language is never neutral and should therefore also be understood as a political act. This implies that the praxeological turn in understanding commons, in the form of commoning, must also be understood as a linguistic turn, whereby speaking constitutes merely one form of social praxis (Austin 2009, Searle 2005). With reference to our discussion of commons, this implies that the way we describe goods also frames their constitution and normative desirability in the symbolic order of things. In our analysis of the Ostroms' work, we have already seen how common-pool resources are defined according to their relatively high costs of exclusion. In our following discussion on nature and ecological freedom, we concluded that commons are never simply given, but are always created through civic activities of self-organization or commoning. I would now like to return to and critically reflect the classical political and economic categorization of goods according to the terms "exclusion", "subtraction" and "rivalry" more thoroughly.

Although Elinor and Vincent Ostrom also used the term "joint-use" (Ostrom and Ostrom 1977), it can generally be said that the mainstream political and economic discourse on goods and property revolves around the categories of exclusion, subtraction and rivalry. Interestingly, all three terms have a certain negative connotation that assume and emphasize the conflictual reality of goods, implying that one person's enjoyment of a good is often interrupted or threatened by other people. This negative connotation, in turn, provides a more general normative and political framework of goods: Where exclusion "unfortunately" is not possible, people must either arduously organize these goods in complex common property arrangements, or – and even worse – let the centralized state manage them. Thus, implicit in this categorization is the assumption that we would actually prefer to possess these goods privately and enjoy them without being bothered by other people. Or put somewhat more radically, the underlying principle of this categorization is – in the words of Sartre – that "hell is other people" (Sartre 1989, 45).



This is not to say that everyone with private property hates his or her neighbors, but rather that a deep fear of other people is an axiomatic basis of individual private property and our understanding of goods in general. As we see, by framing goods in this manner, humans are assumed to exist in inherently antagonistic relationships. Yet in this case, the fact that humans are each other's enemies lies not merely in people's "nature" but is also reproduced in the way we perceive goods. By framing goods in this manner, the antagonistic relation between people is naturalized – and the supposedly best answer to this problem is, obviously, the exclusion of others through negative rights and individual private property. By shutting the other out – and oneself in –, the individual is, thus, apparently freed from unwanted interferences, burdensome responsibilities and conflict. Only from this "original position" of negative freedom based on a supposed material independence can positive freedom be attained by then entering into relationships according to the needs and desires that spring entirely from the independent self. As we can see, this deeply rooted understanding of independent antagonistic individuals and highly contested goods goes against our understanding of ecological freedom which is based on the mutual interdependence of self-organizing living beings that inherently share a common reality. Thus, in order to create a system of democratic eco-law based on commons, we must also reformulate our categorization of goods, which, in turn, should transform our normative framework of social arrangements.

For this reason, I would argue that we must shift our focus when discussing goods from exclusion to inclusion, from subtraction to sustainability or addition and, finally, from rivalry to (negotiated) cooperation. If we change the categorization of goods in this manner, the normative question that implicitly underlies the social organization of goods is then no longer how to limit the consumption of goods through exclusion. Instead, the normative question regarding a good would be: Which goods produce better joint outcomes when shared, and can they be sustainably reproduced or, if possible, increased in number through (negotiated) cooperation? It can be assumed that the categorization of goods in this manner would flip the supposed tragedy of the commons on its head by defining not the (unregulated) commons, but privatization as the problem at hand. In turn, this might provide us with a normative linguistic framework that would

value inclusive, sustainable and additive forms of social arrangements over those based on unlimited individual appropriation.

We must ask ourselves, however, if this replacement of categories is merely a sleight of hand that ignores the “actual” characteristics of goods. In order to answer this question, let us turn to some examples in order to illustrate what I am implying here. As we have already discussed, the question of exclusion is not dependent on the ontological characteristics of a good, but rather on the economic, technological and institutional context that makes exclusion possible or not. Thus, the ability to exclude people from a good is not inscribed in the good itself, but is determined by social conditions and norms. With subtraction and rivalry, the issue appears a little less straightforward. The standard argument assumes that a good is rival or non-rival depending on whether its future use is decreased when utilized or consumed. The classical examples here are food and information. If I eat an apple, the other person cannot eat the same apple because it is gone. If I use a piece of information (e.g. a recipe, a book from a library or an article from a newspaper or in the Internet), the quality of the good is not diminished and thus can be used by another person. In more abstract terms, while food is normally understood as subtractive and thus rival and scarce, information is generally understood as non-subtractive and therefore non-rival. Due to this categorization, food is then classified as a private good and information as a public good, or it is assumed, at least, that these goods *should* be classified in this manner (e.g. Stiglitz 1999).

As was the case with excludability in relation to common-pool resources, we can also think of other ways of perceiving and organizing such goods. With reference to information, diverse examples quickly come to mind where information is not always structured as an open-access public good. For example, scientific information that was, at least in many cases, paid for with public funds is often stored in expensive, private academic journals. We will discuss this problem in relation to the education commons in the next chapter. Printed newspaper articles can also often only be accessed if the newspaper is paid for and therefore privately appropriated. By socially organizing this information as private goods, it is made scarce and rival, despite its supposed inherently non-rival character.

However, the case with apples is a little more complicated. It is true, obviously, that my

consumption of an apple would prevent another person from consuming it. In this sense it could be argued that apples are subtractive and rival goods. But to then assume, as John Locke did (Locke 2008, II, 5, §26), that the apple *must* be a private good is not necessarily given. We will return to Locke later, but his focus on subtraction merely emphasizes one way of using a specific good. There are, for instance, other ways of using an apple that enable or even increase the usability for others: This is the case if I merely take a photo of it (neutral use) or share it with someone else (inclusive, non-additive use) or use its seeds to plant apple trees (inclusive, sustainable/additive use) (Euler unpublished). These three uses demonstrate how an apple can be used in non-exclusive and non-subtractive ways that support interdependent relationships of inclusion and cooperation. Furthermore, by focusing on the individual subtraction of an apple through consumption, two central questions are ignored: (a) Whether other people have access to other apples and (b) how the apples came into existence in the first place. If, for example, there are piles of fresh and juicy apples for a group of people to eat, the fact that I consume one or even a few apples does not make apples *per se* scarce and rival. Alternatively, if apple trees were cultivated by a group of people who then divided them up fairly<sup>63</sup> between themselves year after year, the quantity of apples might be limited, but not necessarily rival and scarce. In this case we might even consider a relative abundance of apples to exist because the group is satisfied with the number of apples available to it and the consumption of apples by another person does not threaten its access to apples due to the acknowledged limitation of everyone's appropriation. Philosopher Jeff Noonan discusses this notion of relative abundance in relation to the conflict of use and appropriation rights between Native and white fishers in New Brunswick, Canada:

“Conflict [over the lobster fishery; LP] is only likely to be resolved if both sides to the dispute interpret ‘abundance’ in such a way that they can agree that there is enough of the resource to share without any group feeling deprived. This conclusion cannot be reached if either side looks at the logic of resource appropriation as governed by the value of profit maximization, since by definition the growth of profit has no ‘natural’ limit and anyone driven by that value will see any restriction upon that logic as a personal or group deprivation” (Noonan 2004, 191-2).

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<sup>63</sup> The fair distribution of these goods must not imply that they are distributed equally, but rather, as for example, according to effort, need or other values that the people define as important.

Here, we are reminded of Elinor Ostrom's work on the democratic governance of commons in which it is stated that the limitation of appropriation can enable the sustainable use and reproduction of resources over long periods of time. This also requires, in turn, a shift from the profit motive and unlimited wants to a mindset based on needs satisfaction and sufficiency or, put more succinctly, from having to being (Fromm 1997). Considered in this manner, relative abundance and non-rivalry would be possible for subtractive goods under the condition of a materially limited reality (Sahlins 1972, 1-39, G.A. Cohen 1995, 128). In this sense, we can agree with Hardin that scarcity and rivalry arises through an unregulated, unlimited and, thus, unfair increase of use of a certain good. Consequently, scarcity is not an intrinsic condition of nature and rivalry is not an inherent characteristic of subtractive goods, but rather depends on the way we perceive and thereby institutionally structure them.

In order to understand this important insight, we will avoid confusion by differentiating between goods, their production and their institutional arrangements. In the case of the apple, we have the apple, the apple tree and many other factors that are necessary for the growth of the apple, such as a plot of land, air and water. With the findings of Elinor Ostrom and Charlotte Hess, we can therefore differentiate between the flow of resources (e.g. apples) and the resource unit (e.g. the apple tree, the orchard and the ecosystem) (Ostrom and Hess 2007, 10). Along those same lines, we can also differentiate between goods used for production (e.g. the apple tree, fishery, machines, capital) and goods used for consumption (the apple, fish, pasta, clothes or wages) (Held 1995, 263). In general, we could therefore say that while the consumption of a good (e.g. chewing and digesting an apple) is often individual (i.e. private), neither the (re)production, the appropriation nor the allocation of that good must necessarily be organized privately. The question that then arises is that of which type of social organization in which goods are more conducive to the values of inclusion, sustainability and addition. Because it can be assumed that a fair distribution of goods could create a sustainable and relative abundance of limited goods, it would be of utmost importance that the individuals dependent on specific resources have the possibility to negotiate and co-determine the social arrangement thereof (Knight and Johnson 2007). In line with the insights gained from the Ostroms' work, we may thus conclude that democratic negotiated cooperation and self-organization are the key counterparts to scarcity, rivalry and, ultimately, tragedy. And because the ability to co-determine the institutional framework would

imply access, inclusion and democratic participation rights, it can be argued that a property regime based on commons, understood as diverse forms of common property arrangements, could possibly fulfill this purpose best.

## **6.2. Common Needs, Common Resources and Common Property**

Similarly, Capra and Mattei argue in favor of a shift in our legal framework from extractive to more sustainable and “generative” property rights based on commons and commoning (Capra and Mattei 2015, 145-6, Kelly 2012). In a nutshell, they contend that for most of human history resources were held in common and only in recent history of humankind has a legal system based on abstract and universal private property rights emerged that enables the unlimited accumulation of capital through private appropriation. Although this legal transformation has provided a part of the world’s population with increased living standards and technological advances, it has also brought with it diverse and grave ecological, social and political problems. For this reason, Capra and Mattei write that “[h]armonizing human laws with the principles of ecology requires, at a minimum, the development of a healthy and legally protected commons sector and associated institutions” (Capra and Mattei 2015, 152). In order to do this, they argue that it is necessary to transform existing forms of property that are structured around the individual to one that is structured around interdependent situations and the shared reality of the community. In the words of Capra and Mattei:

“A radical revision of property and of its relationship with state sovereignty is thus necessary if we wish to transform capital back into commons and build an ecological order. Such an alternative begins with the understanding that a community lives and unfolds in a common space where the actions of one member affect the well-being of all others. Such a space is the venue of life and death for a community and it must serve the interest of every one of its members, regenerating life in it” (ibid., 139).

This shared, common reality thus provides the backdrop for the understanding that humans – and most, if not all, living beings – possess common needs and desires, such as the desire to be loved and respected, the need to eat, the desire to live well and the desire to develop one’s capabilities and to co-determine (i.e. self-organize) one’s reality. Obviously, this is no exhaustive list of human needs, but it does assume that certain needs and desires are common to all sentient beings. This is not to say, however, that the

specific form of need satisfaction is the same for all beings, but that it varies according to species, culture and technological development. On the other hand, instead of assuming conflicting interests and goals as the axiomatic foundation of social arrangements, the ecological approach to property therefore emphasizes interdependencies and the similarity of fundamental needs and desires. From this perspective, it can be argued that primary similarity of needs that then leads to conflicts of interest. Jeff Noonan aptly expresses this idea:

“Beneath differences in the content of cultures, there is, I will argue, a shared – indeed universal – human need for a ‘social habitat,’ that is, a resource base through the use of which goods are produced that in turn sustain the practical and symbolic particularities of the culture. [...] The uniqueness of a culture is a content that is produced by universal forms of human activity. The evidence for the position is provided precisely by the struggles between *different* [individuals and; LP] cultures for the *same* resources. If cultures were radically distinct and discrete wholes they would never come into conflict because there would be no common needs between them, and there would therefore be nothing to struggle about” (Noonan 2004, 186; emphasis i.o.).

As we can see, beneath the conflicts between people lies not completely diverging interests, but rather common needs that are, in turn, co-dependent on the use of shared resources. However, because all living beings exist in webs of interdependent relationships, the satisfaction of one’s needs is highly affected by the manner in which other people satisfy their needs. Due to these existential interdependencies, it is consequently necessary to hold those resources for the satisfaction of such common needs in common.

Conversely, behind this reasoning lies the assumption that, if individuals can privately appropriate these vital resources, then the ability of others to satisfy their basic needs will be limited. Shortly put, their abilities to survive, self-organize and flourish will be undermined. Here, it is noteworthy to point out that the word “private” etymologically comes from the Latin word *privare*, to deprive, bereave or rob (Onions 1966, 711, Glare 2012, 1607-8). This root meaning of the word private thus supports the interpretation that private individual property is something that is taken from the shared reality commons. The individual appropriation of vital resources thus implies that the possible use of these resources by other people is severed – and, simultaneously, the

responsibility and obligations towards other beings is dissolved.<sup>64</sup> Private property therefore turns the relationship of duties on its head: The responsibility does not lie with the owner and towards the community, but rather in the duty of those excluded from the resource to respect the rights of the owner. In the words of Jeremy Waldron:

“Material resources are crucial to our survival and elementary aspects of our wellbeing. In the circumstances of moderate scarcity [and thus possible relative abundance; LP] that we must assume, it is perfectly possible that the uses that are blocked by the duties correlative to property rights are uses that relate to human need, not just covetous desire” (Waldron 2009, 165).

Despite the existence of common needs in a shared reality commons, private property in material resources thus enables people to exclude others from its use, ultimately placing the burden of duty on the community to respect the ownership rights of the individual – and not on the individual to care for the wellbeing of the community. With this inversion, the notion of care and responsibility, as was previously elaborated, is individualized, implying that each individual is responsible for the satisfaction of his or her own needs. Although we cannot deny the importance of individual responsibility for one’s own wellbeing, this entirely individualized notion of care based on private property brings about an atomistic and competitive arrangement that reminds us of Hardin’s tragedy of the unmanaged commons. Tragedy results because no one feels responsible for the needs satisfaction of each member of the community nor that they are institutionally capable of caring for the shared, common resources.

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<sup>64</sup> Although some might argue that private property is entrenched with duties of owners towards society (e.g. I cannot drive my car on the sidewalk or faster than 120 km/h on the highway), I would agree with Jeremy Waldron that we must understand these restrictions not as duties but rather as “general background constraints”. He writes, “[T]he rule that knives are not to be used murderously nor cars driven at a certain speed are not to be seen as property rules. They are part of the general background constraints on action which place limits on what anyone can do with any object whether it is his property – or something he has some sort of entitlement to use – or not. Once we have settled what the background rules of action are, we can then turn to the property rules. If a particular action, say, riding bicycles, is permitted by law, it does not follow that the law permits me to ride any bicycle I please. The specific function of property rules is to determine, once we have established that bicycles may be ridden, who is entitled to ride which bicycle and when” (Waldron 1988, 32-33). Aside from these background constraints, the institution of private property requires that individuals fulfill one central duty regarding others: The respect of other people’s private property and, in turn, the fulfillment of contracts. This reciprocity might be understood as a form of mutual obligation and, thus, care. Yet due to the central principle of exclusion from and non-interference in private property, it ultimately and, at least in principle, liberates the individual of further obligations in relation to the needs satisfaction and wellbeing of other beings. I believe this to be one of Robert Nozick’s central arguments in *Anarchy, State, and Utopia* (1999).



A widespread argument against this rather critical interpretation of individual private property is that ownership is not a unified concept, but rather consists of a “bundle of rights” (Grey 1980, Glackin 2014). This bundles-theory interpretation of property must be understood as a critique of the standard interpretation of William Blackstone’s (1723-1780) famous definition in which private property is “that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe” (Blackstone 2016, 1).<sup>65</sup> Contrary to this Blackstonian notion of private property as “individualistic, exclusive and absolute dominion” (Schorr 2009, 104), the bundles of rights theories, as, for example, presented by Wesley N. Hohfeld (1913) and A.M. Honoré (Honoré 2015), define ownership rights as a collection of diverse and independent rights (Penner 1996, Glackin 2014, 3). Importantly, and as Shane N. Glackin states, “[t]he bundle theory regards these individual and separable rights, or ‘sticks,’ as having no substantive, essential connection to each other” (ibid., 4). In this sense, the notion of private property is not constituted by any *intrinsic* characteristics of the relationship between individuals and things, but rather through *contingent* combinations of the relevant “sticks” between people. This basically implies that prevalent notions of private property are not based on transcendental or natural laws, but that they are historical products of existing societies. At this point it must be admitted that a deconstruction of individual private property into its diverse components is remarkably helpful to “demystify” (ibid., 3) widespread notions of property and understand the complex relationships of access, management, use, exclusion and alienation of resources. Elinor Ostrom and Edella Schlager, for example, use the bundle-of-rights theory in order to analyze the diverse arrangements in “common-property resources” (Schlager and Ostrom 1992). This strategy can open the field to a less ideologically charged debate over the pros and cons of diverse property arrangements, whether individual, common or public.

Nevertheless, I would argue with Henry E. Smith that the bundle theory is problematic because it can cover up normative questions of property arrangements by focusing on the *how* instead of on the *why* (Smith 2011, 281). Furthermore, the analytic “realism” of the bundle-of-right theories conceals the fact that individual private property does have a dominant, central meaning in modern Western societies that is employed either

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<sup>65</sup> As recent work has shown, however, even Blackstone himself did not support this rather monolithic notion of individual private property (Schorr 2009).

simply as a cognitive shortcut in order to simplify complex legal relationships or, and more importantly, as a normative justification of existing social arrangements. As has already been mentioned previously and in line with the arguments of Henry Smith, Jeremy Waldron and Richard Epstein, a central function of individual private property is defined as exclusion or non-interference.<sup>66</sup> Although Jeremy Waldron also defines exclusion as the “key to private property” (Waldron 2009, 164), he elaborates “in Hohfeldian terms” on a few other important aspects of private ownership:

“To justify private property is to justify conferring, recognizing, and enforcing certain individual rights over material resources. An individual X’s rights of ownership in relation to some land, Lx, usually are comprised of such elements as (R1) the right to use Lx, (R2) the right to exclude others from the use of Lx, and (R3) the power to transfer some or all of these rights to others by way of gift, sale, lease or bequest” (ibid.).

Here, we see two additional key aspects of individual private property that result from exclusion: The right to use and to alienate (i.e. trade) resources. Implicit in this definition is also the right to accumulate, underuse or destroy resources. The exclusion of the other provides the owner with the freedom to do what they please with a good within certain “general background constraints” (Waldron 1988, 32).<sup>67</sup> Along these lines, in his book *The Right to Private Property* (1988), Jeremy Waldron further defines ownership as

“the abstract idea of an object being correlated with the name of some individual, in relation to a rule which says that society will uphold that individual’s decision as final when there is any dispute about how the object should be used. The owner of an object is the person who has been put in that privileged position” (Waldron 1988, 47).

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<sup>66</sup> Henry Smith writes, for example, “The architecture of property emerges from solving the problem of serving use-interests in a roughly cost-effective way. [...] At the core of this architecture is exclusion because it is a default, a convenient starting point” (Smith 2011, 282) In Richard Epstein’s book *Design for Liberty* (2011), he writes, “The choice of a sound property ‘baseline’ in the original position is not random. [...] The central proposition is this: the *only* set of substantive rules that achieves that goal is one that requires all persons to forbear from interfering with the property rights of any other person, where ‘interfering’ is narrowly defined to involve taking, using, handling, or breaking the property of another” (Epstein 2011a, 74).

<sup>67</sup> For an elaboration on the notion of these “general background constraints”, see footnote 64.

As we see, individual private property implies the right to exclude others from the determination of how resources will be used and allocated. Here, the *individual* owner has the right to determine the access and use of material resources for the satisfaction of *shared* individual needs. Thus, a central aspect of individual private property over goods is to place the owner's decision-making power and needs satisfaction over that of other members of the community.

As has already been mentioned with reference to the tragedy of privatization, the emphasis on exclusion and non-interference in individual private property rights makes it difficult to alter property arrangements in order to align them with the shared yet conflicting needs of other human and non-human beings. Thus, I would agree with Capra and Mattei that only by holding these vital resources in common can the use of these resources be negotiated over and, hopefully, the needs of all be satisfied. Put in these terms, the central justification of commons must be understood as an ecological (re)interpretation of the basic right to life and liberty or, in our terminology, to an interdependent, sustainable, self-organized and flourishing existence (Alexander and Penalver 2009). According to Capra and Mattei, it is this ecological reasoning that has brought commons into existence throughout human history:

“Ancient institutions of the commons that provide communities with water, wood, agricultural products, education, and housing construction are still alive in ecological niches in Europe and are still very important in much of Africa, South Asia, and Latin America. [...] Even today, when a common need emerges, people tend to organize in common to run recuperated spaces, factories, theaters, gardens, farmers markets, or institutions such as Time Banks. [...] These emerging alternatives, based on the recognition of common needs, material or spiritual, make us understand that *the resources necessary to satisfy a need must themselves be understood as a common and governed according to the principles of solidarity necessary for all to satisfy their needs and for the community to prosper*” (Capra and Mattei 2015, 142-4; emphasis added).

Simply put, by recognizing that humans share both a common reality and common needs, they therefore should recognize that the resources that enable everyone to satisfy these desires also be held in common. In the words of Capra and Mattei, a legal order that is based on generative ownership therefore “serves the needs of life by having the tendencies to be socially just and ecologically sustainable built into the very fabric of its organizational structures” (Capra and Mattei 2015, 146).

The ideal type of commons can thus generally be defined as goods created, reproduced and held in common by a group of people, a network or a community that is dependent on and affected by a specific material or immaterial resource. This definition closely resembles the notion of common property as defined by Jeremy Waldron:

“In a system of common property, rules governing access to and control of material resources are organized on the basis that each resource is in principle available for the use of every member alike. In principle, the needs and wants of every person are considered, and when allocation decisions are made they are made on a basis that is in some sense fair to all” (Waldron 1988, 41).

In contrast to individual private property, which defines exclusion as its structuring principle, common property arrangements emphasize access and inclusion. Although commons often have – or even require – boundaries, they can nevertheless be considered inclusive because they enable those in need and those affected to define and adapt the institutional framework thereof. In this sense, commons are based on democratic network governance systems that ensure the inclusion and participation of the affected people. Simultaneously, commons demand that the users are responsible for the sustainable reproduction of the specific resource. Commons are thus structured according to the individual satisfaction of common yet conflicting needs and desires through the sustainable and interdependent co-(re)production of these goods. It is important to underline here that commons must not necessarily assume an extremely high level of harmony or unity, but instead provide people with the ability to collectively solve conflicts and shared practical problems through democratic negotiated cooperation. This aspect of common property arrangements emphasizes the “freedom-against” characteristic of ecological freedom. In this sense, common property arrangements support and enable democratic problem solving – not merely in political, but also in economic and social areas of life. Last but not least, the (re)production and maintenance of commons is not merely a means to an end (freedom through, e.g. individual needs satisfaction), but must itself be understood as an end in itself (freedom with). This is best understood through the concept of conviviality, in which people’s satisfaction of needs occurs not in isolation, but in acting with others.

### **6.3. Reinterpreting John Locke's Theory of Property from a Commons Perspective**

In order to fully understand this central argument in favor of the justification of resources held in common for individual need satisfaction, it might be helpful if we compare it to John Locke's (1632-1704) justification of the private appropriation of resources in his *Second Treatise of Government* (1689). The reason why I choose to reinterpret Locke's labor theory of property is that its importance for our contemporary understanding of individual private property and our social arrangements cannot be underestimated. It lies at the heart of the concept of a self-regulating market, Robert Nozick's libertarianism and, also, Garrett Hardin's tragedy of the commons. I will thus present a short sketch of Locke's argument and then revise his theory according to our understanding of ecological freedom and the commons. This will revolve around three conceptual and normative shifts: from (self-)ownership to guardianship, from non-interference to non-domination and, finally, from individual labor to interdependent need satisfaction.

#### **6.3.1. Locke's Justification of Individual Private Property**

Framed in the Christian theology of his time, Locke believed, quoting Timothy (6:12), that "God has given us all things richly" (§31; emphasis omitted). More precisely, God "has given the Earth to the Children of Men, given to Mankind in common" (§25; emphasis omitted). According to these notions, the abundant natural resources originally belonged to everyone and thus to no one. This is what Simmons and Waldron call a "negative community" (Simmons 1992, 238, Waldron 1988, 153). Locke understands this type of social arrangement as a commons (§28), which reminds us of Garrett Hardin's notion of an open-access and unregulated commons. Furthermore, in this supposed state of nature, all humans are "equal and independent" (§6) and each has the right to or, rather, the freedom of self-preservation (§17, 19). Yet, in order to survive, humans are required to labor, may this be through hunting and gathering or, as God supposedly preferred, through "subduing or cultivating the Earth, and having Dominion" (§35). According to Locke, this, however, puts humans in a problematic situation: How can humans appropriate and consume goods that belong to everyone? (§25-6) In order to solve this problem, Locke argues that one's self, including one's body and the labor of one's body, must originally be understood as one's individual private property (§27). From this premise of self-ownership, he argues that individuals then have the right to

transform the resources originally held in common into private property through the “mixing” of their labor with the common resources (§27), be it through picking an apple, killing a deer or cultivating wheat. In Locke’s words: “So that God, by commanding to [labor and; LP] subdue, gave Authority so far to *appropriate*. And the Condition of Human Life, which requires Labour and Materials to work on, necessarily introduces *private Possessions*” (§35; emphasis i.o.). According to Locke, only the private appropriation of goods through labor can secure the survival and liberty of humans (§26). Although Locke understands property as a means to life and liberty, he then collapses the three values under the term of property (§123), ultimately defining the protection of property as the “chief end” of society and government (§124).

It must be noted, however, that in his labor theory of property Locke does not clearly differentiate between the right to the fruits of one’s labor (e.g. the apple, the deer or the wheat) and the resources that brought this fruit forth (e.g. the apple tree, the land on which the wheat is grown and, possibly, the whole deer or, possibly, the territory where the deer live). In Elinor Ostrom and Charlotte Hess’s terminology, this implies the right not only over the resource unit, but also over the resource system itself, which can otherwise also be understood as the means of subsistence (e.g. water, land, tools etc.) and the means of production (e.g. machines and factories). This ambiguity implies that the labor theory of property can easily support the right not only to the outcome of the labor process, but also to the resource system involved in the labor process itself. Nevertheless, Locke limits the right to appropriating these common resources by two provisos: (a) If the resources are not left to spoil (§31) and (b) if there remains “enough and as good” for others (§33). While the “spoilage limitation” (Macpherson 2011, 204-11) aims at limiting the under-use of goods, the “sufficiency limitation” (ibid., 211-14) should provide all humans with the access to sufficient natural resources in order to be able to secure their existence.

Locke describes, however, how these limitations were annulled with the “invention” of money (§36). Because it is possible to hoard money without it spoiling, Locke contends that the first proviso is no longer applicable and people may accumulate it without limit (§50). The fact that money can buy large amounts of natural resources is, according to Locke, no longer a problem because the owner will not leave the land to spoil, but will use this land productively in order to increase profits (§48, 50). As Adam Smith argued

almost 100 years later, the use of resources for profit is not interpreted as extraction and depletion, but rather as an increase in the wealth of mankind and the conveniences of life (§37). In contrast to Hardin's tragedy of the open access commons, according to Locke, the private appropriation of common resources supposedly increases the value of the resources involved (§40, 43, 45).

Interestingly, the second sufficiency limitation also becomes invalid with the introduction of money. Here, Locke provides two reasons for the annihilation of the right to access resources in order to secure one's existence. Firstly, the introduction of money is based on a "tacit and voluntary consent" (§50), which then legitimates the inequality that results through the private accumulation of wealth. Secondly, although Locke admits that the accumulation of wealth in the hands of a few creates scarcity for those without property (§45), he nevertheless believes this to occur "without injury to any one" (§50). On the one hand, this is due to the increases in productivity that result from the unbound profit incentive. These increases in productivity supposedly create an abundance of conveniences for the wider population and therefore compensate for the scarcity that was brought about through privatization (§41). On the other hand, it is implicitly assumed that the individual without access to the means of subsistence in the form of natural resources still possesses their own body and can therefore sell their labor power in exchange for a wage (§28). Now, it is no longer the direct access to natural resources that secures one's existence, but instead the access to money through wage labor, which in turn enables the laborer to survive by buying food and a place to live on the market. As becomes apparent, the original, equal right to self-preservation and liberty through the access to resources held in common is thus transformed into the protection of the existing and unequal distribution of property on the one hand, and the necessity of the property-less to gain access to wage labor relationships in order to secure their life on the other hand. This is the basic argument of John Locke's labor theory of private property.

Although this story may initially appear rather straightforward and convincing, there are numerous premises in Locke's theory of property that are highly problematic. To name just a few: The existence of the independent individual in a state of nature; the open-access commons (*res/terra nullius*) as a state of nature; the concept of self-ownership; the suspension of the provisos through the introduction of money and wage



labor; and the necessity to declare something as one's own private property in order to use or consume it. We will deal with these issues one at a time by arguing that a commons theory of property requires a shift from (self-)ownership to guardianship, from non-interference to non-domination and, finally, from labor to needs.

### 6.3.2. From (Self-)Ownership to Guardianship

As our discussion of nature has demonstrated, all living organisms, including humans, are self-organizing yet always exist in webs of interdependent relationships. For this reason, the original state of nature is not to be understood as one where individuals roamed around alone, but where people – as they still do today – lived and worked together in groups – in, with and against other humans and the more-than-human world. As most historical and ethnological research shows, resources were never conceived as *res nullius*, but were always embedded in diverse informal and formal rules of rights and obligation. Often enough, so-called “primitive” economies were based on communalistic economies with central resources held in common (Weston and Bollier 2013, 133-5, Diamond 2007, 131-3).<sup>68</sup> As was the case with Thomas Hobbes, the concept of the independent individual and the common world as *res nullius* is thus a historical and legal construct of Locke's day projected back onto nature.

This raises a few questions: Would the concept of interdependent living beings shed a different light on the notion of (self-)ownership? If ownership is founded on “labor” can I truly be considered to be my own property? Would I not, in fact, be the property of the people who raised me and the environment that provided me with sunlight, air and things to eat? As we see, although human beings have a sense of self and the power to self-organize, this does not mean that one's existence has been brought forth merely through one's self and through one's own labor. With reference to Andreas Weber's

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<sup>68</sup> The anthropologist Stanley Diamond, for example, explains: “Primitive societies rest on a communalistic economic base. This is not to say that everything in such societies is owned in common, which is clearly not the case, but rather that those material means essential to the survival of the individual or the group are either actively held in common or, what is equivalent, constitute readily accessible economic goods. [...] Exceptions to this communal condition dissolve under close scrutiny. For example, it is claimed that members of Hottentot joint families ‘own’ particular cows in the family herd, but we find that they cannot privately dispose of them. It is similarly assumed that individuals ‘own’ particular watering places, but we discover that access is never denied to other people in need of it. On the other hand, true private property does exist among primitives, in the form of tools made by the individual, breechclouts, back scratchers and similar ‘extensions of the personality.’ However, private property of this type does not constitute primitive capitalism; this does not exist, at least among primitives. The private property that can be identified is either not essential for group survival, is readily duplicated by any individual in the society and therefore need not be owned communally, or is of so personal a nature that it cannot be owned communally.” (Diamond 2007, 131)

concept of the gift economy of the open-source “natural commons”, I would therefore argue that the self should also be understood as a gift – not necessarily from God, but from the infinitely complex processes of co-creation that result from the mutually interdependent relationships of the web of life. Or, phrased somewhat differently, the individual should thus be conceived as a product of nature and society – and an active and semi-autonomous agent therein. Here, the focus is shifted from the supposedly independent “Man” who forms the world to the world that brings each individual being about. Here, the individual does not determine, but takes part in this process of interdependent co-creation. Such an understanding of the self-world relationship may sound somewhat peculiar in the ears of people brought up and trained in the Western mode of thinking based on methodological individualism. Despite the danger of ethno-romanticism here (Latour 2004, 42-49), I believe that it can be argued that such a notion is far more prevalent in the Buddhist notion of dependent co-arising (Macy 1979, Garfield 1994, Loy 1997) and in diverse indigenous traditions (de Sousa Santos 2008, 2016). A famous portrayal of this notion has been expressed in the phrase attributed to Chief Seattle, in which he apparently stated that “the earth does not belong to man, man belongs to the earth.”<sup>69</sup> This understanding is also echoed in Aldo Leopold’s *Land Ethic*, in which he writes: “In short, a land ethic changes the role of *Homo sapiens* from conqueror of the land-community to plain member and citizen of it. It implies respect for his fellow-members, and also respect for the [socio-ecological; LP] community as such” (Leopold 1987, 204).

A central implication of this understanding of the self as a member in a network of reciprocal gift giving is that it ultimately transforms a central category of property rights from ownership to guardianship. The resources that one uses, be it the land, the water or one’s own body, are not something that one owns, but rather a gift of nature and of society. Although the notion of the gift and guardianship is often associated with “archaic” societies (Mauss 2002), it is also marginally discussed in contemporary

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<sup>69</sup> As is generally well known, the authenticity of this phrase and of Chief Seattle’s speech is contested. Although the speech was supposedly held in 1854 or 1855, it was only published by Dr. Henry A. Smith in the *Seattle Sunday Star* on October 29, 1887. Since then, numerous versions of the speech have been published (Low 1995, Krupat 2011, Rothenberg 1999). Importantly, the cited famous phrase is actually not part of the original speech published in 1887, but appears in later versions thereof. Despite this historical inaccuracy, I nevertheless believe it justified to refer to this quote, because it reflects the notion of another type relationship with world – irrespective whether it was expressed by Chief Seattle or someone else.

debates on property arrangements. Karl Marx, for example, refers to the concept of stewardship in this somewhat well-known passage in volume three of *Capital*:

“From the standpoint of a higher socioeconomic formation, the private property of particular individuals in the earth will appear just as absurd as the private property of one man in other men. Even an entire society, a nation, or all simultaneously existing societies taken together, are not the owners of the earth. They are simply its possessors, its beneficiaries, and have to bequeath it in an improved state to succeeding generations, as *boni patres familias* [Good heads of the household]” (Marx 1991, 911)

Although Marx equates ownership and property here, the gist of his critique goes in a similar direction as the argument we have been developing: That humans are not owners of the earth, but that they have received this earth and their selves from others and therefore have a duty to care for their own well-being and that of their society and ecosystem for the benefit of future generations. In contrast to Marx’s statement in this passage, I would argue that it is not property per se but specific property arrangements based on the notion of exclusive, individual private ownership that are problematic. In this sense, commons can – or should – be understood as an institutional property arrangement in which not only exclusion is replaced by inclusion, but ownership is also replaced by guardianship.

While this may appear to be a rather simple task, it would in fact require us to revise not only our understanding of ownership over things, but also our deeply rooted notion of self-ownership. According to Locke, it is the notion of self-ownership that provides individuals with the right to exclusive ownership of the world. At this point I would agree with G.A. Cohen and Michael Sandel that the concept of self-ownership is in itself highly problematic because it lays the foundation for an individualistic and absolute understanding of property rights. With reference to Nozick’s interpretation of Locke’s concept of self-ownership, G.A. Cohen brings the problem to the point when he explains that the “polemically crucial right of self-ownership is the right not to (be forced to) supply product or service to anyone” (G.A. Cohen 1995, 215). Similar to the abstract and absolute right of ownership over things, the right to self-ownership implies that each person has “no non-contractual enforceable obligations to anyone else with respect to the use of your powers” (ibid., 240). In turn, the premise of self-ownership enables the

rejection of all claims of the community on the fruits of the other person's labor. For this reason, Cohen understands self-ownership to be a central pillar for open and competitive markets in which each individual is free to own, alienate, exchange and accumulate goods without limitations and obligations to other individuals. Along these lines, I would therefore also argue that the affirmation of self-ownership and the right to the fruits of one's labor ultimately denies other people and society in general the right to a share of these fruits. Along with Cohen, I would therefore conclude that the answer to this grave problem is the "rejection of the thesis of self-ownership" itself (ibid., 230). However, while Cohen then vaguely propagates the "affirmation of non-contractual obligations to serve other people" (ibid.), I would argue that we must develop the previously discussed care ethic into somewhat more robust property arrangements that enable the co-determination of socio-ecological rights and duties.

For this reason, I would turn to Michael Sandel who, to my knowledge, is one of the few contemporary Western philosophers who has not only criticized the notion of self-ownership but has also developed an alternative notion of property based on guardianship. In his book *Liberalism and the Limits of Justice* (1986), Sandel discusses Rawls' *Theory of Justice* (1971) and the general notion of self-ownership. Here, Sandel agrees with Rawls that we should understand the self as made up of a purely contingent and arbitrary distribution or, in our terminology, gift of our natural endowments. For this reason, Sandel argues that we should not interpret our relationship to these gifts as something that we own. Instead, he argues,

"To be sure, the various natural assets with which I am born may be said to 'belong' to me in the weak, contingent sense that they reside accidentally within me, but this sense of ownership or possession cannot establish that I have any special rights with respect to these assets or any privileged claim to the fruits of their exercise. In this attenuated sense of possession, I am not really the owner but merely the guardian or repository of the assorted assets and attributes located 'here'" (Sandel 1986, 82).

The fact that a person is born with – or without – certain arbitrary qualities and capabilities implies that this person then has no justification to consider their self and the fruits of their labor as their own. But how, then, are we to conceptualize the relationship to our selves and the world? For this reason, Sandel differentiates the concepts of the owner, the guardian and the repository. According to Sandel, ownership

in its strongest version implies “that I have absolute, unqualified, exclusive rights with respect to my endowments” (ibid., 96). In its more moderate version, he states that “I have certain privileged claims with respect to them, a bundle of rights, while not unlimited, at least more extensive with respect to my assets than any bundle of rights anyone else may have with respect to them” (ibid.). In contrast, the repository of assets assumes the complete arbitrariness of the relationship between the self and one’s natural endowments and provides little basis for the recognition of the subject. The notion of guardianship, however, assumes a relationship between one’s self and its endowments and assets, yet embeds it in an intersubjective, communitarian framework:

“To say that I am the guardian of the endowments I bear is to imply that they are owned by some other subject, on whose behalf, or in whose name, or by whose grace I cultivate and exercise them. This is a notion of possession reminiscent of the early Christian notion of property, in which man had what he had as the guardian of assets belonging truly to God, and it is a notion that fits with various communitarian notions of property as well” (ibid., 97).

The basic reason why Sandel defends such a notion of property rights is that we are able to understand property as a social phenomenon that has been created not only for the satisfaction of one’s individual needs and desires, but also for the needs and desires of the community and society in general. In general, I would agree with Sandel that the notion of guardianship enables us to conceptualize a form of property that breaks with the classical concept of independence, absolute sovereignty and dominion. Yet, instead of falling back into hierarchical dependencies characteristic of the feudal system, a democratic notion of guardianship embeds resources into a contextual framework of property based on interdependencies, mutual care and co-determination. And in contrast to both the Christian and communitarian interpretation of guardianship, I would understand the stewardship not toward God and not only toward one’s fellow human beings, but equally to all living and non-living beings – as a type of socio-ecological stewardship. Thus, by defining an individual’s relationship to its self and to the world as a form of guardianship within this ecological web, I would argue that we have laid the cornerstone of the “structural [eco-]communality of the commons” (Meretz 2012) for property arrangements that include those without a voice: The wider community or society “in general”, nature and future generations. For this reason, it is this principle of stewardship that the scientists Will Steffen et al. propagate as a crucial

means to solve the serious threats that humanity faces in the epoch of the Anthropocene (Steffen et al. 2011).

### **6.3.3. From Non-Interference to Non-Domination**

Although this argument might sound reasonable, it may be feared that the shift from ownership to guardianship will open the door to the arbitrary oppression of the individual by the community. In order to deal with this legitimate critique and potential danger, I will argue in the following section that not guardianship, but rather non-interference leads to new forms of domination and, thus, arbitrary interference. This insight brings us to the conclusion that a revision of Locke's theory of property from a commons perspective also requires a shift in focus from non-interference to non-domination.

Put in a historical perspective, John Locke's concept of natural property rights were developed as a critique of the existing feudal social order and the absolute powers of the monarchy over property rights. With the rise of the bourgeoisie, this feudal property regime was problematic, because it not only prevented the individual from appropriating more property, but also because the absolute monarch ultimately had the power to arbitrarily confiscate the property of his subjects. Locke's theory of property was therefore a means to deal with both of these problems: On the one hand, it justified an original appropriation of property through labor and an unlimited accumulation through contracts (i.e. money); on the other hand, it protected individual private property from the powers of the state. By grounding these basic property rights in God, nature and reason – all of which were understood to be one and the same (Laslett 2008, 94-6) –, Locke provided a new theological interpretation of the divine property arrangements that lies prior to existing social institutions. This is what is generally understood as natural law. Thus, individual private ownership became a means to hinder arbitrary political powers from interfering with a person's freedom to act. For this reason, non-interference has become a cornerstone for most other notions of freedom.

Considering the power asymmetries of the feudal social order, the right to non-interference is in itself a legitimate claim. However, since Locke's times, the freedom of individual ownership has augmented to such an extent that it has shifted the balance of

power from the absolute monarch to wealthy individuals and large multinational corporations whose existence often lies beyond the grasp of nation states and social control. In this sense, the relationship between sovereignty and private power has been reversed (Bailey and Mattei 2013, 973-4). And while state sovereignty has partially been democratized since Locke's times, property arrangements have remained – often in the name of individual negative freedom and constitutional democracy (e.g. Epstein 2011b) – largely immune to the processes of democratization.<sup>70</sup> With James Tully we can say that this is a result of the prioritization of individual negative rights over democratic rights of co-determination. It therefore appears as though Locke's property rights that were originally developed as a critique of the power of the monarchy have, in turn, enabled new power asymmetries to develop.<sup>71</sup>

In his *Second Treatise on Government*, Locke already recognized that private property and the introduction of money lead to inequalities. According to Locke, however, people must accept these asymmetries due to their “tacit and voluntary consent” to this social arrangement and the supposed fact that monetary wealth “may be hoarded up *without injury* to any one” (§50; emphasis added). As we see, the accumulation of wealth by some individuals has, according to Locke, no negative effects or “externalities” on those with less property or no direct access to the means of subsistence. As has already been discussed, Locke's answer to this problem of scarcity-through-privatization is the possibility to “freely” exchange one's labor for wages and the increases in productivity that result from private ownership. The person without direct access to the means of subsistence can sell his or her labor power to someone who owns resources. Furthermore and as Adam Smith later argued, the unfettered profit motive, market competition and the increased productivity that results results from privatization, will supposedly benefit property-less individuals in providing them with jobs and cheaper goods. In this sense, John Locke and Adam Smith assume that the scarcity-induced conflicts can be solved through increased productivity. Today, this is generally

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<sup>70</sup> It must be noted here, however, that nationalization cannot be equated with democratization. A well-known (failed) example of the democratization of private property is the Meidner Plan in Sweden (Blackburn 2007, Pontusson 1992). This is not to say that diverse small scale cases do exist in which resources have been socialized and democratized, such as reclaiming water rights in Cochobamba, Bolivia, and Italy (Assies 2003, Mattei 2013b) and recuperation of companies by workers in Latin America and Europe (Azzellini 2016).

<sup>71</sup> Saki Bailey and Ugo Mattei describe this as a “return to a sort of neo-medievalism, where state sovereignty is weak and constitutional law is reduced to a Leviathan that uses an iron fist with the weak – the people – and the velvet glove with the strong – corporate powers” (Bailey and Mattei 2013, 973).



understood as economic growth and the “trickle down” effect – and is still a widespread recipe for socio-economic inequalities. Before continuing, it is important to note that this dualistic depiction of reality divided between the haves and the have-nots might appear as highly simplified, especially considering the effects of economic growth over history. While there have been great increases in the absolute amount of wealth since the times of John Locke and Adam Smith (Maddison 2007, Acemoglu and Robinson 2012), the asymmetrical relation between those with and those without property still remains large and socially relevant (Piketty 2014, Oxfam 2017).

But do these inequalities and power asymmetries resulting from the private appropriation of the original commons truly have no negative effects on other people? And are all people still equally free if no one is interfered with by the arbitrary power of the state? The important point to make here is that, in contrast to Locke’s assumption, the unlimited accumulation of resources by some individuals might expand *their* sphere of non-interference, but this accumulation also limits and therefore interferes with the freedom of *others*. Jeremy Waldron lucidly explains this problem in his book *The Right to Private Property* (1988):

“If private property serves negative liberty, it does so because owning something just *is* a matter of being free to use it and of its being the case that one is not to be opposed in that use by the interference of others. But then the distribution of property has a direct impact on the distribution of negative liberty. A person who owns nothing in a society (where everything is privately owned) is not at liberty, in a negative sense, to make use of anything – indeed for everything that he might use, someone else has a right that he should refrain from using it, and it is a right which they are entitled to enforce. If it is true that all (or most) human actions require a material component over and above the use of one’s own body – a location, for example, or an implement – then the unfreedom in a negative sense of the propertyless man is more or less comprehensive. There is literally nothing or next to nothing that he is free to do. This point is mitigated by the existence of some common property even in the most comprehensively capitalist societies: tramps have the streets to walk on and the bridges to sleep under. But that is all they have and all they can do, without falling foul of the prohibitions enforced by the property system of the society in which they have to make a life for themselves” (Waldron 1988, 410-11; emphasis i.o.).

As we can see, the unlimited appropriation of resources by some individuals makes these resources scarce and ultimately undermines the freedom of others, thereby substantially interfering with the freedom of others. While it is often assumed that

negative freedom is to free the individual from undesired and involuntary obligations, as has already been discussed, it nevertheless “generates a duty [...] on everyone to refrain from using it without my permission” (ibid., 109). People without property are thus placed under the duty to recognize the property rights of the other – even if they themselves are property-less and require these resources to survive. Similarly, G.A. Cohen vividly illustrates this relationship between one’s duty to respect the property of others and the interference with the freedom of those without property:

“The banal truth is that, if the state prevents me from doing something that I want to do, then it places a restriction on my freedom. Suppose, then, that I want to perform an action which involves a legally prohibited use of your property. I want, let us say, to pitch a tent in your large back garden, perhaps just in order to annoy you, or perhaps for the more substantial reason that I have nowhere to live and no land of my own, but I have got hold of a tent, legitimately or otherwise. If I now try to do this thing that I want to do, the chances are that the state will intervene on your behalf. If it does, I shall suffer a constraint on my freedom. The same goes, of course, for all unpermitted uses of a piece of private property by those who do not own it, and there are always those who do not own it, since ‘private ownership by one person presupposes non-ownership on the part of other persons’ (Marx 1991, 948)” (G.A. Cohen 1995, 55-6).

The general point that Waldron and G.A. Cohen are making is that no neutral or positive sum property arrangements exist, due to the interdependence of individuals on resources that people need for their life and liberty. The accumulation of some resources inherently leads to scarcity for others. While the concept of non-interference might have made sense in its historical setting against the powers of an absolute monarch, the un-interfered-with and thus unlimited appropriation of resources can substantially undermine the life and freedom of others. As becomes clear, the interdependence of living beings implies that the existence and freedom of one being is inherently intertwined with the existence and freedom of another being and therefore always “interferes” with others – whether we like it or not.

As previously mentioned, John Locke’s answer to the problem of exclusion from the direct access to resources is wage labor. But is there not a fundamental difference between the direct access to resources and the pursuit of wage labor? On the one hand, it could be argued that there is no difference between working on the original commons and wage labor because both are a means to secure one’s existence through labor. Whether I cultivate my vegetables or earn a wage to buy vegetables makes no significant

difference. On the other hand, it must be acknowledged that the two are significantly different. The difference between the two is rather simple: When people do not have direct access to the means of subsistence or production, they have no other choice than to enter wage labor relationships. They either go hungry or perform work for another – that is, if they can find a job.<sup>72</sup> In this sense, we may speak of a socially determined existential necessity that forces people without access to the means of subsistence to enter wage labor relationships. Although the coercion is not exerted by individuals but through society's property arrangements, the force is neither less real nor natural nor entirely accidental.<sup>73</sup> We can therefore say that property arrangements that do not provide people with the direct access to the means of subsistence and production deny those people the right to life and liberty.

Because this structural coercion is non-accidental, the inability to directly access the means of subsistence also means that an individual's ability to survive and freedom to choose how they will survive is interfered with in an *arbitrary* manner. While Philipp Pettit presents us with a less profound critique of wage labor relationships (Pettit 2006),<sup>74</sup> I would nevertheless use his notion of domination as arbitrary interference in

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<sup>72</sup> Starting one's own business is rather unlikely for most people without property, understood either as means of subsistence (land), means of production (machines) or accumulated wealth (capital), because in order to start a business, resources are required. The ability to borrow money (credit) to start a business could possibly be an option, but also requires an "accumulation" of either social or symbolic capital (e.g. knowing the right people, having the right education, a good reputation or social status) that is not always given. This is not to say that starting a business for people without property is entirely impossible, but it is nevertheless rather unlikely.

<sup>73</sup> While people like Townsend and Malthus aimed at naturalizing social arrangements that cause scarcity and poverty (Polanyi 2001, 116-21), Friedrich von Hayek argues that such occurrences cannot be considered unjust because they arise accidentally from the unintended interaction of individual agents. Hayek writes: "Though we are in this case [of injustice; LP] less ready to admit it, our complaints about the outcome of the market [a property regime based on individual private property; LP] as unjust do not really assert that somebody has been unjust; and there is no answer to the question of who has been unjust. Society has simply become the new deity to which we complain and clamour for redress if it does not fulfill the expectations it has created. [...] For in such a system in which each is allowed to use his knowledge for his own purposes the concept of 'social justice' is necessarily empty and meaningless, because in it nobody's will can determine the relative incomes of the different people, or prevent that they be partly dependent on accident. 'Social justice' can be given a meaning only in a directed or 'command' economy (such as an army) in which the individuals are ordered what to do; and any particular conception of 'social justice' could be realized only in such a centrally directed system" (Hayek 2013, 233). In contrast to this view, I argue that social arrangements can be considered unjust because they are always created by individuals with a specific purpose. The history of individual private property shows that it has always aimed at excluding other people from its use – and forcing people into wage-labor relationships (Neeson 1996, 27-34, Castel 2003). This coercion was therefore, in the eyes of some, not unintended. Yet even if this structural coercion was not intended, this should in no way deny people the right to criticize and counteract the negative effects that result therefrom.

<sup>74</sup> In *Freedom in the market* (2006), Philipp Pettit argues with reference to Adam Smith that wage labor can – in an ideal or well-functioning labor market – provide people with the ability to escape domination. Most importantly, this occurs through the possibility of exiting relationships of domination (Adam Smith refers here to master-servant relationships characteristic of the feudal

order to comprehend its diverse problems. With Philipp Pettit, we could say that arbitrary interference occurs when one person can arbitrarily interfere with the choices and plans of another person. Here, the action of one person is “chosen or rejected without reference to the interests, or the opinions, of those affected” (Pettit 1997, 55). In this sense, one person’s exclusion from the means of subsistence or production makes them dependent on the arbitrary will of the proprietor and his or her desire to employ them. As Jeremy Waldron explains:

“Appropriation [...] wreaks a drastic change in the position of non-appropriators. From being tenants-in-common of God’s largesse, they are now placed in the position of moral [and economic; LP] dependence, for everything but bare survival, on the say-so of individual property-owners.” (Waldron 1988, 175-6)

Put in a historical perspective, this is what Karl Marx calls “so-called primitive accumulation” and what is more generally understood as the enclosure, privatization or dispossession of commons that began in the 12<sup>th</sup> century, if not earlier, and has continued until today (Marx 1982a, Part 8, Linebaugh 2008, Federici 2009, Neeson 1996, Zückert 2003, Harvey 2004, Boyle 2003). Although this process of enclosure might have freed peasants from the feudal relationships of serfdom, it also “freed” peasants

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apprenticeship system (Smith 1994, 117, 136-42)) and entering more favorable ones (Pettit 2006, 142-4). In *Republicanism: A Theory of Freedom and Government* (1997), Pettit discusses, however, the problem of domination in what socialists have otherwise called “wage slavery” during the rise of capitalism and argues that his theory of non-domination supports this critique of wage slavery (Pettit 1997, 141-2). In this sense, Pettit criticizes property arrangements that lead to asymmetrical power relations and domination, which in turn legitimize state regulation and a fairer distribution of property: “The distribution of property may tend toward inegalitarian extremes, and it may be necessary to regulate against the effects of those extremes on people’s overall enjoyment of freedom as non-domination” (Pettit 2006, 147). Despite this conclusion, he argues that the domination or, rather, arbitrary interference must be “more or less intentional in character” (Pettit 1997, 52). For this reason, he limits the notion of domination in property arrangements to particular relationships and intentional actions. In *Freedom in the market* he writes, “The property regime can have the aspect of an environment akin to the natural environment. Like the natural environment, it will certainly affect the range or the ease with which people enjoy their status as undominated agents, and it may warrant complaint on that account, but *it will not itself be a source of domination*. It will not be a source of domination so far as it is the *cumulative, unintended effect* of people’s mutual adjustments, where that history of adjustment may or may not have begun in government initiatives” (Pettit 2006, 139; emphasis added). As we can see, this is a similar argument as presented by Friedrich Hayek (see fn. 73) because Pettit brackets out the “unintended” domination that arises from the social structure or property arrangements themselves. As I have already argued there, it is highly questionable whether the domination that arises out of such property arrangements is entirely unintended, because the legal framework has been intentionally implemented and maintained (Gourevitch 2013, 606). And even if these effects of a specific property regime were unintended, I would agree with Alex Gourevitch that a republican theory of non-domination must include not only intentional domination in a particular employer-employee relationship, but also the structural domination that arises in wage labor relationships out of asymmetrical property arrangements (ibid., 598-601).

from their means of subsistence – ultimately making them vulnerable to the arbitrary interference of proprietors.

In contrast to our previously developed notion of socio-ecological interdependence, the economic dependence on wage labor is therefore problematic because of the asymmetrical power relationship between the employer and the employee. The subject without property is therefore placed in a situation of vulnerability and powerlessness vis-à-vis the proprietor/employer. In turn, this relationship leaves the door open to domination. Here, we can also refer to Pettit's notion of domination, which he defines as such:

“Both [the employee and the employer; LP] will share an awareness that the powerless can do nothing except by the leave of the powerful: that the powerless are at the mercy of the powerful and not on equal terms. The master-slave scenario will materialize, and the asymmetry between the two sides will be a communicative as well as an objective reality” (Pettit 1997, 61).

The fact that wage labor relationships have been entered by contract does not, however, alter the existence of this power asymmetry (ibid., 62). Although the ability to exit wage labor relationships slightly increases one's freedom, it does not protect or immunize the property-less from future relationships of domination. In turn, within the hierarchical wage relationship, domination is often experienced as a necessity to fulfill certain tasks that are determined by the employer, thereby denying the employee his or her freedom to self-organize and co-determine their activities with others. As a result, we find two potential types of domination in wage labor: One in the asymmetrical distribution of access to productive resources and the other in hierarchical employee-employer relationships (Gourevitch 2013, 598).

This is not to say that all wage relationships are experienced as hierarchical and oppressive. Contemporary forms of wage labor relationships in a modern knowledge-based economy, for example, often support individual creativity, self-management and team collaboration. Yet despite these gains in the individual freedom for employees, the range of freedom is often limited by the demands of the employer to increase productivity and outputs (Boltanski and Chiapello 2007). Furthermore, the relationship of domination remains because it is not necessary that the person in power (e.g. the

employer) actively interferes with the freedom of the property-less (e.g. the employee). Instead, we can argue with Pettit that “[w]hat constitutes domination is the fact that in some respect the power-bearer has the *capacity* to interfere arbitrarily, even if they are never going to do so” (Pettit 1997, 63; emphasis added). The mere capacity of property owners and employers to deny an individual their wage labor and thus a means to survival on the one hand, and the mere capacity to subjugate the employee to the will of the employer within a wage labor relationship on the other hand, provides the basis for domination, even if it is not actively exercised. In this sense, we can argue with Pettit that the property-less “are in a position where fear [of unemployment; LP] and deference [to the employer; LP] will be the normal order of the day, not the frankness that goes with *intersubjective equality*” (ibid. 64; emphasis added). By creating asymmetrical positions of power and domination, property arrangements that enable the unlimited private accumulation of resources can therefore arbitrarily interfere with and undermine the equal right of all people to life and liberty. Ironically, the arbitrary interference caused by asymmetrical property relationships as described above reminds us of the domination of the sovereign, which Locke originally aimed to limit and avert. The arbitrary interference and domination that arises from negative freedom rights ultimately undermine not only the equal negative freedom rights of the property-less, but also the principle of self-organization that underlies our notion of ecological democracy. In order to grasp and deal with the problem of negative freedom, I argue with Philipp Pettit that we must shift our focus from non-interference to non-domination, thereby proving to each member of a community the protection from arbitrary interference and, in turn, the possibility of participating in the activities of co-determination of their activities.

Following this line of thought, one answer to the problem of domination is limiting the accumulation of resources by individuals and corporations. With reference to the concept of guardianship previously discussed, this should not merely be framed as a cap on wealth, but rather as basic responsibilities towards other individuals, affected communities and the environment that are inscribed in property relations themselves. Succinctly put, the limiting of accumulation reciprocally enables the freedom of others. In John Rawls’ *Theory of Justice* this is classically defined as the maximin principle: socioeconomic inequalities must be limited in order to maximally benefit the least advantaged (Rawls 1999). With a more socio-ecological focus, Capra and Mattei briefly



discuss the implications of such a limitation of accumulation in their discussion of eco law. In relation to corporations they suggest:

“Ecolaw will not consider corporations, which are the current face of accumulated capital, as people, because unlike every other creature they are immortal. In the United States, for example, the idea that economic interests can be incorporated no matter what their purpose is quite recent and dates back to the late nineteenth century. Before then the legal benefits of incorporation were granted only for specific purposes and were limited in time. Once the purpose of a corporation had been achieved, such as when the Charles River Bridge was completed, the corporation would dissolve, as naturally as individuals die. In ecolaw, the benefits of incorporations are restricted, with conditions to care for the environment and respect communities” (Capra and Mattei 2015, 185-6), 185-6).

In this sense, the purpose, activities and existence of corporations will always be bound to their meaning and value for the affected people and environment. In turn, this socio-ecological embedding should limit corporations’ ability to dominate others. This can theoretically imply either the limitation of resource extraction from socio-ecological systems or the redistribution of wealth back to those affected by an economic enterprise.

Despite the importance of limiting accumulation and, thus, limiting power asymmetries, the notion of non-domination also requires people to be protected from potential domination. Based on our argument, this would require people not to be forced to enter into asymmetrical wage labor relationships due to existential necessity. Within the republican tradition, this has often been understood as the freedom from economic dependencies. For this reason, thinkers such as James Harrington, Jean-Jacques Rousseau and Thomas Jefferson argued that freedom and democracy can only be realized through the widespread distribution of property in resources and, more specifically, in land (Jackson 2012, 34-5). Generally put, all three propagated an agrarian republicanism that was assumed to secure the independence of individuals through a broad distribution of land and, thus, the direct access to their means of subsistence. Such a property arrangement would protect individuals from economic dependencies and, in turn, produce independent, responsible, diligent and austere citizens. With the rise of the open access market and commercial society the focus slowly shifted from land to the access to public goods such as universal education, healthcare and old age pensions. This



age-old argument that property in resources is a necessary precondition for a life and liberty has more recently taken on different forms as for example: John Rawls' concept of a property-owning democracy (Rawls 2001), Bruce Ackerman and Anne Alstott's notion of *The Stakeholder Society* (Ackerman and Alstott 1999), the idea of the unconditional basic income, which is, for example, strongly advocated by Philippe Van Parijs (Van Parijs 2003, Widerquist 2013, Pettit 2007). At the center of all these concepts is the basic idea that property is a necessary precondition for life and independence, generally understood as the freedom from arbitrary interference and domination.

We will discuss Rawls' notion of property-owning democracy shortly, but for the time being, it is crucial to note the importance of commons for the freedom from arbitrary interference and domination. Similar to the previously mentioned concepts, commons have historically provided people with direct access to their means of subsistence and therefore "offered some independence of wages and markets" (Neeson 1996, 12). Similarly, Stuart White argues,

"In the same way that the historic enclosure of the commons helped to create a proletariat, reliant on wage-labour, the emergence of the commons today can conceivably help limit this reliance. To the extent that capital- and commons-based predistribution reduce reliance on wage-labour, they thereby also help reduce the risk of domination from this source. They will tend to make workers less desperate to find jobs and so help protect them against situations where, because of the urgent need for a job, they are vulnerable to domination by employers" (White unpublished, 10).

The direct access to resources in the form of commons can therefore limit the arbitrary interference that arises through asymmetrical distribution of individual private property and the dependency on hierarchical wage labor. Furthermore, by defining non-domination as a central pillar of property arrangements, "no single individual can arbitrarily make the decisions affecting each other" (Gourevitch 2013, 609). In turn, this enables Pettit's "intersubjective equality" (Pettit 1997, 64) to come about, in which people can organize economic activities, including wage labor relationships, in a more democratic manner. The important point, however, is that the notion of commons developed here emphasizes non-dominated socio-ecological interdependence and not economic independence. Put in this light, the advantage of commons over more

individualistic property arrangements, such as Rawls' property-owning democracy or a basic income, is that the interdependencies are inscribed in the property arrangements themselves. While criticizing dependencies that result from asymmetrical power relations, a commons theory of property would not fall into the illusions of individual independence, as many republican theories do, but would instead critically reflect how interdependencies can be organized in a manner that hinders arbitrary interference and domination on the one hand, and enables negotiated self-organization of economic activities on the other. The fundamental question is not, therefore, whether interference exists or not, but rather how commons arrangements can be organized in order to distribute freedoms and duties in a manner that supports the interdependent and sustainable self-organization of all living beings.

#### **6.3.4. From Individual Labor to Interdependent Needs**

Up until now, we have reinterpreted John Locke's theory of property by shifting our understanding of property from ownership to guardianship and from non-interference to non-domination. The justification of these shifts was largely based on the socio-ecological interdependencies of living beings and the problems of arbitrary interference and domination that arose out of a purely negative definition of freedom. The connection of interdependencies and non-domination led me, in turn, to the justification of a commons property arrangement. Now, however, a central question relevant to the reinterpretation of Locke's theory of property arises: How should the appropriation of resources from commons be legitimized? According to John Locke, the ability to individually appropriate resources held in common is based on what is often defined as the labor theory of property. By working on the resource, I have a right to declare it as mine. In turn, Locke also declares that a thing must be one's individual private property in order to use or consume it. In order to critically reinterpret these widespread justifications of individual private property, let us begin with Locke's labor theory of property and, more precisely, Carol Gould's critique thereof in her book *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society* (1990).

Similarly to my defense of an ecological and interdependent interpretation of reality, Gould argues that in order to overcome the problems of domination and exploitation we must base our property arrangements not on an individualistic, but on a social ontology.

As a critique of Locke's individual labor theory of property, she argues that most forms of production occur not individually but through social cooperation and collaboration. Conceptualizing labor activities in this manner, she thus maintains that the labor theory of property "gives rise to a different conception of property right, namely, social property" (Gould 1990, 177). Yet, in order to protect a minimal realm of negative freedom and non-interference for the individual, Gould distinguishes between personal and social property. In this postulate, Gould differentiates between personal property that is "required for the individual's own subsistence and self-development" (Gould 1990, 180) and social property, which is "required by individuals in common in order to realize their joint purposes" (Gould 1990, 180). Furthermore, she develops two fundamental rights of social property. Firstly, the "right of all of those engaged in a common activity to control the products of that activity, or to enjoy in common the benefits of their labor", which provides the "condition for the development of the sociality of individuals as individuals-in-relations" (Gould 1990, 183). Secondly, she argues in favor of the "equal right to control the conditions of social activity" (ibid.), which sounds very similar to our definition of democratic freedom. But Gould says that this implies not only the "right to participate in decisions concerning the uses of the conditions or means of social production in which one is engaged" but also "the right to participate in decisions concerning the purposes and plans of the activity" (Gould 1990, 183-4). Simply put, the right to co-determination is based on one's participation in a joint, social activity. I would therefore agree with Gould that such a social right to democratic co-determination and the individual right to the fruits of one's social activities provides an important cornerstone for a more social and democratic interpretation of Locke's labor theory of property. It provides a radical shift from the right of the individual proprietor to exclude others to the right of others to be included in the common use and benefits of the specific resources. Furthermore, her understanding of "labor" is broad enough to include not only people in wage-labor relationships, but also people who participate in unpaid social activities. Finally, her notion of social property is not conceptualized as state property but rather as "the property of the associated individuals engaged in a given common activity, whether in an industry or a social organization" (Gould 1990, 189).

On a similar note, this principle is also expressed by the legal scholar Burns H. Weston and commons intellectual David Bollier in their book *Green Governance: Ecological*

*Survival, Human Rights, and the Law of the Commons* (2013). In relation to the “principles of internal [commons; LP] governance” (275) they write that “[c]ommoners shall have collective control over the surplus value they create through the collective management of their shared wealth and resources” (Weston and Bollier 2013, 277). While Gould emphasizes the recognition of the individual equal right to positive freedom in relation to others, we would interpret this from our commons perspective as the equal right to individual and interdependent self-organization. Despite these gains in a social and democratic reinterpretation of Locke, I would nevertheless argue that a labor theory of property is not adequate for a commons theory of property because, firstly, it remains rather exclusive and, secondly, falsely prioritizes labor activities over the general right to existence through primal needs satisfaction.

In order to understand these limitations, let us begin with the basic argument for a (social) labor theory of property. Since we have already discussed the problems of a labor theory of property in relation to the notion of ownership, we will now focus on the more general problem of grounding a theory of property on labor. Put in more general terms, it must be admitted that a labor theory of property does have an intuitive appeal: If I (or we) change an object that is not owned by anyone, I (or we) should have the right to declare that thing as mine (or ours). With Gould, we could say that if a group of people kills a mammoth, then the group would have the right to the mammoth meat. Or, with a more contemporary example, if a group of people build cars in a factory then they have a right to co-determine how the activities are organized and how the profits of the company are distributed between the employees. Although Gould argues that her concept of social property refers to the broad notion of “social activity” (Gould 1990, 183) and is thus not limited to wage-labor relationships, the principle of a *labor* theory of property inherently limits the questions of co-determination to those performing the specific labor activities. The other people, who are not engaged in these activities but are nevertheless largely affected by them, are thus excluded from the rights to co-determination. Thus, by focusing on labor activities, people outside of the hunting, farming or industrial activities (in both cases often women and the wider community) are excluded from the decisions of how activities are organized and, more importantly, what is then done with the fruits of labor generated by this activity. According to the principle of non-interference, it would be assumed that people outside of these activities should have no say in the co-determination of these affairs. Considering, however, the

division of labor in society and the interdependent self-organization of living beings (i.e. the dependence of the person pursuing wage-labor, the person at home taking care of the children and the household and the city taking care of the education, pollution, unemployment etc.), it becomes less clear why people at home or in the community should be *completely* excluded from the important decisions that are made in businesses that *largely* affect and determine their lives.

In order to understand this problem better, let us turn to an example that lies closer to home: The ability to democratically participate in political affairs. In contrast to the fundamental right to democratic co-determination of one's interdependent life conditions, the argument for political participation based on negative liberty and individual private property, as presented by John Locke, is grounded on the right to non-interference by the state authority. People are allowed to vote in matters of the state because they are subjugated to the state monopoly on the use of force. Furthermore, people (are coerced to) pay taxes for the state to provide certain public goods such as law and order, roads or education. For this reason, because these people are subdued by force to be a member of this specific association and are also required to pool private resources through taxation, they ultimately should also have a say in how the state is organized or, as is most often the case, they should be able to elect who shall rule and determine the organization of the state and its activities. So, the main justification of the democratic right to participate in public affairs of the state is the fact that citizens are involuntarily and highly affected by the state's overarching authority. Political participation is therefore a means to limit arbitrary interference of the state (i.e. domination) and to collectively define its legitimate forms of interference (e.g. taxation). In more general terms, participation is a means to legitimize the basic rules governing our common reality. Here, the more fundamental right to democratic self-organization shimmers through the negative right to non-interference. According to the classical argument based on negative freedom, one would, however, have no right to co-determine the organization of and use of surplus value in the firm one works in – or in any other –, because one has the free choice to exit this wage labor relationship and work elsewhere (where one will also most likely not have the right to democratic participation). Finally, if one is not happy with the undemocratic business that one works in, one theoretically has the right to start a democratic enterprise with others. According to this logic, the exit option provides people with the ability to escape

involuntary domination in “private” associations, but does not provide them with the right to co-determination in the activities that they perform with others and in those that they are affected by.

On the one hand, I would agree that we must differentiate between different types of associations in which people live (e.g. the state versus private firms). On the other hand, if we understand freedom as non-dominated freedom with, through and against the other in the co-determination of the socio-ecosystems that one inhabits, the strict separation between the in- and out-group becomes less clear. Put somewhat simply, although I do have a choice between different partners, products or jobs, due to the existential necessity of wage-labor (even in its non-dominated and democratic form), the people of a community are largely affected by and interfered with by the way in which firms conduct their business. In this sense, it makes a large difference for a society as for example: how low (or high) wages are; what type of products are being produced and sold (e.g. chemical or organic fertilizers); and what type of technology is being used (e.g. whether very little labor or more craft and skill is necessary). Even though these issues are often understood as private matters concerning, first and foremost, the official owners of the firm (e.g. the shareholders), they do have large effects not only on the workers of the firm, but also on the surrounding community and the wider public because they share a *common reality* and are dependent on this reality for their life and liberty. Parallel to the dependence of an individual's life and liberty on wage labor relationships, we must admit that communities are also greatly affected by, dependent on and, thus, potentially dominated by the economic activities of “private” associations. While Carol Gould's social labor theory of property would widen this range of co-determination to those performing the specific collective activities within the firm, the affected communities nevertheless remain excluded from this process of democratically negotiated self-organization. As we see, therefore, the social interpretation of a labor theory of property is limited due to its focus on the performance of labor activities, which then excludes those human and non-human beings that are largely affected by the activities yet are not actively participating in them. For this reason, I would argue that it is necessary to include not only the shareholders and those performing specific labor activities, but also the largely affected stakeholders in the democratic co-determination of enterprises, ultimately transforming an economic enterprise and association into a type of commons (Tortia 2011). Put slightly differently, the *arbitrary* interference in and

potential domination of enterprises in one's private life plans legitimizes the *non-arbitrary* "interference" in or, rather, the co-determination of social activities of (re)production in economic organizations that effect one's interdependent common reality. We will discuss the notion of economic commons associations in greater detail later, but let us now turn to the second fundamental problem in the labor theory of property: The priority of labor over life.

The question that arises from our previous discussion of economic activities, the division of labor and the affected community is therefore whether *labor* itself is truly the ideal justification for the appropriation of resources and the appointment of authority to determine the allocation and use of resources. I will not discuss the intricate details of the difficulties in the labor theory of property (Waldron 1988, Ch. 6). Instead, I would like to begin with Hume and Kant's general critique of Locke's labor theory of property that a minimal possession of external resources must precede any form of labor. According to them, this prior possession does not arise from labor, but instead from simple occupation (ibid., 173-4).<sup>75</sup> It is the prior occupation of land and space that, in turn, enables people to access, labor on and use these resources. Or, more simply put, property in the world is a precondition of labor – and therefore also for life and liberty. Only if I can *access* resources (whether directly or through contract) can I then work on them in order to survive and, hopefully, live freely. This insight figuratively turns Locke's labor theory of value on its head – or, as will become clear, back to its original meaning. Although I would not necessarily agree with the manner in which Hume and Kant frame the problem as a warlike state of nature in which each *individual* must protect his or her goods from the threatening dispossession by others, I would nevertheless agree with their general insight. Yet, in a somewhat less individualistic and belligerent rhetoric, we could also say that the original appropriation of external resources does not occur through labor, but through people simply *being in the world*.

If this argument is correct, it would also require us to reinterpret the notion of the "right to property". To do this, it may be helpful to use Jeremy Waldron's differentiation

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<sup>75</sup> In the words of Jeremy Waldron, "Before a man can cultivate a piece of ground, he must take it into his possession and exclude others from its use; otherwise their exercise of common rights might make his cultivation impossible" (Waldron 1988, 173).



between a special-right based and a general-right based argument for property.<sup>76</sup>

Waldron defines the concept of “rights” and the different arguments accordingly:

“A right-based argument for private property is, as we have said, an argument which takes an individual interest to be sufficiently important in itself to justify holding others (especially the government) to be under duties to create, secure, maintain, or respect an institution of private property. A *special-right-based argument* (or SR-based argument, for short) is an argument which takes an interest to have this importance not in itself but on account of the occurrence of some contingent event or transaction. A *general-right-based argument* (or GR-based argument, for short) is one which does not take the importance of such an interest to depend on the occurrence of some contingent event or transaction, but attributes that importance to the interest itself, in virtue of its qualitative character” (Waldron 1988, 115-6).

This distinction enables us to pinpoint a central problem in the labor theory of property. Put in general terms, John Locke transforms the primary and original general-right to access resources in the original state of nature into a special and contingent right to appropriate resources through labor. Furthermore, Locke’s justification of private property was based not only on the right to the fruits of one’s labor, but also on the increased productivity that was brought about through labor and private ownership. Simply put, those who produced *more* possessed the ultimate right to resources. For example, it was the increase of “comforts” and “conveniences” (§41) through productivity gains in farming that justified the taking of the “wild woods and uncultivated waste of America” from the “needy and wretched inhabitants” of the New World (§37). Although Locke did not actually argue for the privatization of common lands in England (§35), the reasons that justified the violent expropriation and enclosure of commons were based on similar arguments (Neeson 1996). As Locke explains, “God gave the world to men in Common; but since he gave it them for their benefit, and the *greatest Conveniencies of Life* they were capable to draw from it, *it cannot be supposed he meant it should always remain common and uncultivated*” (§34; emphasis added). This special-rights based argument for individual private property has grand implications: On the one hand, Locke assumes that productivity and resources held in common are mutually exclusive; on the other hand, it implies that an increase in productivity provides people with the right to own resources over those who are less productive (i.e. farming over hunting and gathering, industrial production over craft

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<sup>76</sup> It should be noted, however, that Jeremy Waldron adopted this distinction from H.L.A. Hart (Waldron 1988, 106).

work etc.). Both of these assumptions and arguments are still widespread today (Demsetz 2002). Moreover, the priority of productivity leads to a linear, growth-oriented justification of property arrangements and economic activities instead of, for example, arrangements based on care for the sustainable reproduction of resources. That being said, we may conclude that Locke's special-rights based argument of resource appropriation through productive labor does not secure the general right to life, liberty and property for all, but instead leads to the privilege of those with greater strength and skill to extract more common resources from nature and society.

It must be admitted that Carol Gould's labor theory of social property attempts to mitigate this problem by stating that everyone participating in a specific activity should likewise control the means of subsistence and production and have a share in the fruits of labor. Yet nevertheless, a very large asymmetry between those who can produce more and those who cannot or do not produce much can result thereof. This is precisely the problem that Karl Marx describes in his *Critique of the Gotha Programme*, in which he criticizes the principle of the equal right to the fruits of one's (social) labor:

"The right of the producers is *proportional* to the labor they supply; the equality consists in the fact that measurement is made with an *equal standard*, labor. But one man is superior to another physically, or mentally, and supplies more labor in the same time, or can labor for a longer time; and labor, to serve as a measure, must be defined by its duration or intensity, otherwise it ceases to be a standard of measurement. This *equal* right is an unequal right for unequal labor. It recognizes no class differences, because everyone is only a worker like everyone else; but it tacitly recognizes unequal individual endowment, and thus

productive capacity, as a natural privilege" (Marx 2009, 9-10).

As Marx emphasizes, while the focus on labor may be correct according to certain standards of justice and equality, it nevertheless remains an abstraction that negates the differences between individuals' productive capabilities and activities, ultimately creating and legitimizing a material inequality between people. This inequality can then, in turn, lead to power asymmetries and relationships of domination between people. In Waldron's terminology, we could say that even a *social* labor theory of property is a special right and thus remains contingent and somewhat arbitrary. According to Marx, this is due to the focus on the distribution of goods in the "sphere of circulation" after

the goods have been produced – instead of the distribution of the means of subsistence and production themselves.

In order to deal with this problem, I would therefore argue with Jeremy Waldron that we must shift our legitimation of property from a specific-right based to a general-right based argument. This implies, in Lockean terms, a shift from the labor theory of property “back” to the primary general right of all people to access resources that originally belonged to all of humanity. But then what would the justification of the right to use and appropriate goods be based on, if not labor? The answer to this question is quite simple and has already been mentioned: Needs. As Waldron explains,

“[A] GR-based argument for private property is not satisfied by the assignment of one or two trivial or useless resources to each individual; it requires the assignment to individuals of resources that they take seriously as the basis of their individual economic well-being. Thus the universal distribution of private property, required by a GR-based argument is likely, as a matter of fact, to *satisfy the demands of the principle of need*, for in seeing to it that everyone has private property, the proponents of that argument will also in effect be seeing to it *that everyone has the wherewithal to satisfy his basic needs*” (Waldron 1988, 440; emphasis added).

According to Waldron, the shift from a special-rights based labor theory of property to a general-rights based needs theory of property places the principle of occupation or rather being, life and self-preservation at the heart of our property arrangement. It can therefore be said that a labor theory of property reverses the fundamental relationship with the world from one based on embodied being in relationships with the world to one based on the unequal opportunity to pursue productive activities. One’s relationship to the socio-ecosystem is therefore dependent on one’s arbitrary natural endowments and one’s capability to work and accumulate. The labor theory of property assumes that humans should first work and then eat and have shelter, even though they require shelter, food and most likely many more resources (e.g. education) before they can work. Simply put, basic needs must be fulfilled before work can be performed. Anyone who has brought up children knows this to be a general fact. For this reason, a more just theory of property must place needs satisfaction over labor. In Lockean terminology, we must therefore conclude that a property regime that fulfills this criteria of life, liberty and property for all is not one based on labor, but on the more general right to existence

through the access to resources that enables one to satisfy one's needs. Yet, to be precise we must admit that Jeremy Waldron is not arguing for a general right to common property or commons. However, although he focuses on individual private property, the argument also holds true for common property. And as we have already argued, the justification for the access to commons instead of individual private property is the fact that commons provide people with the more adequate institutional arrangement to deal with conflict in the satisfaction of people's common and interdependent needs.

In conclusion, it can therefore be said that the development of a commons theory of property demands that we critically revise Locke's renowned labor theory of property. As has been demonstrated, this demands a threefold shift in our understanding of property: Firstly, the shift from (self-)ownership to (self-)guardianship integrates the wider socio-ecological web of life in institutional property arrangements. Secondly, the shift from non-interference to non-domination requires that people have direct access to resources held in common in order to avert arbitrary interference and, in turn, enable the co-determination of one's activities and life conditions. Lastly, the critique of a (social) labor theory of property has demonstrated the necessity to prioritize the more basic and general right to resources according to interdependent needs satisfaction (i.e. "being", life or self-preservation) over the special right to resources through labor appropriation.

After having worked through this central theory of property, the question arises how such a right to property should be conceived. To gain an idea of what such a property arrangement might look like, let us now turn to the work of John Rawls, who also argues for the direct access to resources or, in his terminology, an *ex ante* or *pre*-distribution of property in the name of individual freedom and democracy. Parallel to our revision of Locke's theory of property, we will now critically examine and reinterpret Rawls' notion of pre-distribution and property-owning democracy from a commons perspective.

## 6.4. Pre-distribution: Commons in a Property-Owning Democracy

It can generally be said that John Rawls is one of the most important political philosophers of the 20<sup>th</sup> century. His magnum opus *A Theory of Justice* (1972/1999)<sup>77</sup> has until today remained a central reference for the arguments and conceptualization of a free and just society. Within this work and somewhat more explicitly in his later book *Justice as Fairness: A Restatement* (2001), Rawls discusses the property arrangements of such a society. Here, Rawls develops and defends the notion of pre-distribution, in which property in resources is understood as a precondition to one's life and liberty. This principle of pre-distribution allows him to develop a model of property-owning democracy, which we will analyze here. The question that then arises is whether this notion of pre-distribution and property-owning democracy can aid our development of a commons theory of property and if not, how we must reinterpret Rawls' model. In order to answer this question I will, firstly, sketch Rawls' theory of justice and his concept of a property-owning democracy. Next, I will discuss the relation between the individual and society and critically analyze the role of the competitive market in this model. Finally, I argue that an ecologically sound pre-distribution scheme must shift its focus from productive assets and productivity to shared resources and the care thereof. Thus, I claim that common property arrangements would provide a better background structure for a sustainable property-owning democracy.

### 6.4.1. John Rawls' Property Owning Democracy

In order to grasp Rawls' understanding of pre-distribution and a property-owning democracy, I will first portray and discuss his theory of justice largely with reference to his book *Justice as Fairness: A Restatement* (2001).

Rawls formulates the fundamental idea of justice as "a fair system of social cooperation over time from one generation to the next" (JF, 5). He breaks this concept down into his two principles of justice:

"(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and

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<sup>77</sup> In my discussion of Rawls' theory of justice, I will refer to the second edition of the book *A Theory of Justice* published in 1999 with the abbreviation "TJ". The book *Justice as Fairness* will be mentioned as "JF".

(b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).” (JF, 42-3)

The first principle should enable the “fair equality of opportunity,” which is more generally understood as “liberal equality” (JF, 44). The second principle, on the one hand, refers to the “fair value of political liberties,” which should ensure the “equal chance of influencing the government’s policy and of attaining positions of authority irrespective of their economic and social class” (JF, 46). On the other hand, the second principle also includes Rawls’ famous “difference principle” which radically binds or limits the individual accumulation of wealth to the benefit of those least well-off in society. Within our ecological understanding of social reality, the difference principle could be understood as a means to express the principle of social interdependence and the requirement that a society can only flourish when all individuals can also flourish. As mentioned previously, it can provide a strategy to limit arbitrary interference and domination.

Rawls conceptualized his theory of justice to lay the foundations for the “basic structure” of a just and free society. According to Rawls, the basic structure<sup>78</sup> is the “primary subject of political justice” (JF, 10) and should secure just “background institutions” that “remain fair over time, from one generation to the next” (JF, 51). The reason these institutions are in the “background” is because they are supposedly founded on a general overlapping consensus of the members of a society and should thus not be put into question or attacked anew in each period of legislation. These institutions should make justice and freedom socially sustainable.

After his first formulation of a just basic structure, Rawls’ theory of justice was believed for a long time to defend and legitimize welfare-state capitalism. He sparingly revised this common interpretation for the first time in the preface to the second edition of *A Theory of Justice* in 1999 (TJ, xiv-xvi) and then more extensively in his later book *Justice*

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<sup>78</sup> Here, Rawls elaborates on the concept of the basic structure: “[T]he basic structure of a society is the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation over time. [...] The basic structure is the background social framework within which the activities of associations and individuals take place. A just basic structure secures what we may call background justice” (JF, 10).

*as Fairness* in 2001. Since this reformulation, there has been a growing interest in the interpretation and further implications of his theory of justice (O'Neill and Williamson 2012, Cheneval and Laszlo 2013).

In his discussion of the specific institutions of a just basic structure, Rawls differentiates between five different regime types: State socialism with a command economy, laissez-faire capitalism, welfare-state capitalism, property-owning democracy and liberal (democratic) socialism. Not very surprisingly, Rawls rejects state socialism because it is controlled by a single political party and “violates the equal basic rights and liberties, not to mention the fair value of these liberties” (JF, 138). In this regime type, the economy is structured according to a general plan that negates both democratic participation and free markets. Yet, Rawls also criticizes laissez-faire capitalism, which he calls “the system of natural liberty” (JF, 137) because it “secures only formal equality” and rejects both principles of justice (JF, 137).<sup>79</sup> To the surprise of some, however, Rawls also argues that welfare-state capitalism (WSC) does not live up to the standards of his theory of justice. Although WSC does express “some concern for equality of opportunity, the policies necessary to achieve that are not followed” (JF, 138). Furthermore, WSC also rejects the second principle of justice, the fair value of political liberties. Due to these underlying values, WSC “permits very large inequalities in the ownership of real property (productive assets and natural resources) so that the control of the economy and much of political life rests in a few hands” (JF, 138). While WSC generally provides those in need with a social minimum, the inequalities that bring such needs forth are themselves not regulated, limited or eradicated.

The only answer to the failings of state socialism, laissez-faire capitalism and welfare-state capitalism is what Rawls calls property-owning democracy (POD) or liberal (democratic) socialism. While he only shortly discusses liberal socialism, Rawls develops

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<sup>79</sup> In a letter to Philippe Van Parijs, Rawls elaborates on his critique of laissez-faire capitalism. Here, he sharply criticizes the “large open market” of the European Union, because it “is aim of the large banks and the capitalist business class whose main goal is simply larger profit” (Rawls and Van Parijs 2003). This economic class justifies their interests with the “idea of economic growth, onwards and upwards, with no specific end in sight” (ibid.). He continues that distribution is almost exclusively referred to without the mentioning of welfare-state redistribution and “in terms of trickle down” (ibid.). The problem with such an unregulated market economy is that the “long-term result of this [...] is a civil society awash in a meaningless consumerism of some kind” (ibid.). With reference to this sharp critique, it can be said that Rawls rejects large, open markets in general because they are often utilized by economic (and political) elites to accumulate capital without having to redistribute their gains to other members of society. Furthermore, such a market economy creates individuals that are merely consumers and not understood – or do not understand themselves – as political citizens.



the differences between WSC and POD in somewhat more detail. Liberal socialism consists, according to Rawls, of a regime in which the means of production are owned “by society” (JF, 138). Yet, in comparison to state socialism, a plurality of parties compete and, therefore, are forced to share political power. Furthermore, economic power is not centralized but “dispersed among [democratically organized; LP] firms” (JF, 138). And, just as importantly, economic activities are structured not by a centralized plan but through “a system of free and workably competitive markets” (JF, 138). Despite the few comments on liberal socialism, it appears as though this regime is what many other intellectuals understand as market socialism: An economy organized by worker-owned firms and a “free” market economy (Miller 1990).

Aside from liberal socialism, the only other social arrangement that realizes Rawls’ principles of justice is what he calls property-owning democracy (POD).<sup>80</sup> Similarly to liberal socialism, POD must, according to Rawls, be understood as “an alternative to capitalism” (JF, 135-6). However, while liberal socialism emphasizes social ownership, similar to laissez-faire capitalism and WSC, POD allows for individual private property in productive assets. The major difference between WSC and POD is, nonetheless, that while WSC allows “a small class to have a near monopoly of the means of production,” POD ensures a “wide and far more equal dispersion of real property and productive assets” (JF, 161). Importantly, this also includes human capital, “that is, education and trained skills” (JF, 139). Rawls is, however, rather vague in defining what these primary goods could be. Besides education and training, the focus is often on what Rawls calls “productive assets”, which are interpreted by most of those developing his notion of POD as “productive capital” (O’Neill 2012, 80, Hsieh 2012, 156, Freeman 2013, 23, Thomas 2017, 307). Furthermore, in a POD the distribution of capital and wealth occurs not at the “end of each period” (ibid.) after the process of production and the distribution of assets through market exchange have taken their course but rather “at the beginning of each period” (JF, 139). The shift from WSC to POD is thus a shift from *ex post* to *ex ante* distribution. The shift in perspective is important because it intends “not simply to assist those who lose out through accident or misfortune (although that must be done), but rather to put all citizens in a position to manage their own affairs on a footing of a suitable degree of social and economic equality” (JF, 139). Put somewhat

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<sup>80</sup> The concept of POD was adopted from the English economist James E. Meade (1907-1995), who explicitly discussed the term in his book *Efficiency, Equality and the Ownership of Property* (1964).

differently, POD attempts to realize the substantive equality in which the right to life, liberty and property is not merely understood negatively as the *protection* of already existing property relations but also positively as a general right to *access* the means of production. This shift from redistribution to pre-distribution should transform individuals *dependent* on welfare into *independent* individuals capable of equally and freely participating in social cooperation. While inequalities and dependencies often lead to class antagonisms and political apathy, this material independence should, in turn, provide recognition and self-confidence to all members of society, ultimately empowering them to participate in democratic politics (JF, 140).

#### **6.4.2. Rawls' Notion of the Individual and Society**

After having laid out Rawls' general understanding of his theory of justice and a property-owning democracy, the question arises why he focused on a wide dispersion of individual private property. Generally, Rawls grounds the priority of individual freedom and, therefore, individual private property on the "reasonable pluralism" of individual conceptions of the good. Due to the plurality of ends individuals pursue, Rawls argues for the priority of the right over the good, which, in turn, should be realized through the original position and an overlapping consensus.

To delineate Rawls' position more clearly, it may be helpful here to shortly compare Rawls' concept of justice with Elinor and Vincent Ostrom's concept of the commons. On the most general level, there appears to exist quite an overlap in the conceptualization of Rawls' well-ordered, just and democratic society and the Ostroms' design principles for the sustainable and democratic governance of resources and institutions held in common. Both the Ostroms and Rawls emphasize the importance of a shared understanding of justice, the significance of shared knowledge of the constitution of society's basic structure and the necessity of effective self-organization. That being said, while the Ostroms develop their under-theorized concepts of justice and sustainability from empirical examples of pre-contractual social cooperation and democratic participation, Rawls grounds his normative position in the thought experiment of the "veil of ignorance" and the "original position" and in the contractual agreement of an "overlapping consensus."

Due to the conflicting plurality of individual concepts of the good, the veil of ignorance and the original position enable people to “be removed from and not distorted by the particular features and circumstances of the existing basic structure” (JF, 15). According to Rawls, it is precisely the thought experiment of the original position that enables people to grasp the equality of persons despite opposing interests and unequal bargaining advantages (JF, 16). The aim of the hypothetical and ahistorical original position (JF, 16-7) is to provide a just procedure in order to arrive at an “overlapping consensus” or social agreement on the “fair terms of social cooperation between citizens regarded as such” (JF, 16). While the Ostroms define symmetrical (or more or less equal) relationships as a central prerequisite for fair and sustainable democratic governance, Rawls formulates a just procedure that provides a hypothetical symmetry of each party despite the actual lack thereof. In relation to the “tragedy of the commons”, it could be said that Rawls’ original position enables humans to overcome tragedy by creating just and stable social arrangements through contractual agreements based on the insights from behind the veil of ignorance. The tragedy is overcome when all participants recognize both the equality of all and the mutual advantage resulting from social cooperation.

That being said, the contrast between the Ostroms and Rawls should not be overemphasized, because more overlap exists than initially perceived. In this sense, I do not wish to focus on the communitarian-liberalism debate in this short discussion of Rawls. As Sybil Schwarzenbach persuasively argues in her article *Rawls, Hegel, and Communitarianism*, this debate is a “red herring” (Schwarzenbach 1991, 564), because Rawls himself does not advocate the “abstract”, “denuded” and “asocial” individualism that many communitarians such as Michael Sandel (1986), Charles Taylor (1994) and Michael Walzer (1989, 185) see in his writing. Contrarily, in the third part of *A Theory of Justice* Rawls strongly emphasizes the importance of complementary cooperation for the “social union” and the realization of the “well-ordered society”.<sup>81</sup> Rawls explains, for example:

“The social nature of mankind is best seen *by contrast with the conception of private society*. Thus human beings have in fact shared final ends and they value their common institutions and activities as good in themselves. We need one another as partners in ways of life that are engaged in for their own sake, and *the successes and enjoyments of others are necessary for and complimentary to our*

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See especially chapter 79 “The Idea of the Social Union”.

*own good. [...] Thus we may say following Humboldt that it is through social union founded upon the needs and potentialities of its members that each person can participate in the total sum of the realized natural assets of the others. We are led to the notion of the community of humankind the members of which enjoy one another's excellences and individuality elicited by free institutions, and they recognize the good of each as an element in the complete activity the whole scheme of which is consented to and gives pleasure to all*" (TJ, 458-9; emphasis added).

As we see, Rawls' concept of a just society reaffirms our insight of the interdependent self-organization and convivial flourishing of the individual for the whole and the whole for the individual. The provision of the access to property enables people to satisfy their needs in a self-organizing manner that is in accordance with their natural endowments and capabilities – and those of others. Furthermore, this provision does not simply occur “magically” through the public institutions of the state, but through the “collective activity of justice [which] is the preeminent form of human flourishing” (ibid., 463). This concept of justice as the basic structure could thus be understood as the shared norms and values of a community brought about by and reproduced through civic social actions, interactions and institutions.

#### **6.4.3. The Competitive Market and the Problem of Endless Growth**

The problem in Rawls' concept of justice, therefore, does not lie in the discrepancy between the individual and society as is often discussed in the communitarian-liberalism debate. Instead, I would argue the problem lies in two tensions: on the one hand, a tension between the “private” economic reproduction of society and the “public” reproduction of a society's basic structure; on the other hand, a tension between the non-ideal reality and the ideal concept of justice. Expressed somewhat differently, the problem in Rawls' theory of justice is not the individual-society-state relationship, but rather the market-state dichotomy. Because we will discuss the concept of non-ideal theory in more depth later, let us shortly turn to Rawls' understanding of the market.

Interestingly, in both property-owning democracy and liberal socialism, Rawls defends a wide distribution of property against the backdrop of a competitive market economy. The combination of a wide distribution of productive assets and a system of “(workably) competitive markets” (TJ, xiv) is meant to “prevent a small part of society from controlling the economy and indirectly political life itself” (ibid., xiv-xv). The assumption

is that competitive markets “properly regulated secure free choice of occupation and lead to an efficient use of resources and allocation of commodities to households” (TJ, 244). In their ideal form, regulated competitive markets – coupled with the widespread distribution of productive assets – should ensure not merely the freedom of association, but also the efficient use of society’s resources. Finally, it must also be noted that Rawls’ just and well-ordered society does not necessarily require perpetual economic growth; *ex ante* distribution in line with the two principles of justice should also, theoretically, be realizable in a stationary state (JF, 63-4).<sup>82</sup>

Although this might be assumed, I generally question whether the wide dispersal of individually owned productive assets combined with highly competitive markets can actually be realized and maintained over generations. Here, I would argue that the economic “virtues” (pursuit of self-interest, competitiveness etc.) that are cultivated through individual private property and open and competitive market arrangements would undermine the social cooperation necessary for the stable or “sustainable” reproduction of the just basic structure of society “over time from one generation to the next” (JF, 5). This is a common critique of Rawls’ theory of justice and property-owning democracy (Krouse and McPherson 1988, 102-3, Wesche 2013, 106-9, Hussain 2009, Roemer 2013). Aside from this ethical argument, highly competitive markets inherently lead to the accumulation and overuse of socio-ecological resources, as we have already discussed. This is what we understood as the tragedy of privatization and open and competitive markets. In this sense, I would agree with Sybil Schwarzenbach that the provision of “productive capital” is highly conducive to “exclusive and acquisitive” ownership (Schwarzenbach 1987, 144) and ultimately to an economy geared towards perpetual monetary growth.

The reasons for this are twofold: Firstly, for capital to be productive, it is invested into a specific enterprise for interest. This implies that the firm must produce and sell goods, which, in turn, enables the entrepreneurs to earn profit and pay the interest back. Then, however, the increased amount of capital is lent again with the aim of receiving interest.

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<sup>82</sup> In *Justice as Fairness*, Rawls writes, “A further feature of the difference principle is that it *does not require continual economic growth* over generations to maximize upward indefinitely the expectations of the least advantaged (assessed in terms of income and wealth). That would *not* be a reasonable conception of justice. We should not rule out Mill’s idea of a society in a just *stationary state* where (real) capital accumulation may cease. A well-ordered society is specified so as to allow for this possibility.” (JF, 63-4; emphasis added).

In turn, more goods are produced and consumers (hopefully) buy more things. As is important to note, with each time capital is lent, its amount *must* be increased, for that is the reason why it was lent. If the expected rate of interest cannot be paid back, capital is withheld and the economy slumps or breaks down. This is what Streeck refers to as the “investment strike” of capital (Streeck 2013, 50). In this sense, the inherent logic of an economy based on interest and productive capital is one of perpetual and exponential growth (Hardin 1993, 61-68). Due to this dynamic, the amount of productive assets made available to each citizen must, in turn, also be increased in each round of *ex ante* pre-distribution. Secondly, the reproduction and pre-distribution of capital separates the monetary mediation of needs satisfaction from the socio-ecological basis of wealth production. This separation then often enables humans to ignore and forget where monetary wealth originates and allows people to believe that material wealth can increase without limits – despite the limits to economic growth in a world of finite resources. Or, put somewhat differently, the pre-distribution of productive capital not only neglects the question of *how* capital is produced and reproduced, but also transforms the *means* to satisfy one’s needs (through money) into an *end in itself* (wealth accumulation and the potential to satisfy ever more increasing needs). Yet, as previously mentioned, it is not only capital’s “veil of ignorance” that allows us to forget the socio-ecological foundation of wealth and to develop unlimited material needs and desires, but it is rather a central and inherent function of productive capital to perpetually and exponentially grow. In this sense, the supposed stability that results from an economy based on productive capital and competitive markets is socio-ecologically highly unsustainable (Schweickart 2012, 213).

Although Rawls does argue that we *could* have a steady state economy, I believe for the aforementioned reasons that the pre-distribution of “productive capital” would nevertheless result in an ecologically unstable growth-oriented economic system – even if the *ex ante* distribution of these assets were highly fair and just. The usual answer to this problem would be that robust laws and a “just background structure” could protect socio-ecological resources from overuse. If, however, unlimited growth is a central feature of the economy then both the people demanding their return on investment and those required to pay their interest back will always attempt to undermine and challenge these rules. More generally expressed, and as has already been discussed in relation to the state-market dichotomy, the separation of the individual and “private”

economic interests from general, “public” interests ultimately leads to the limitation of political regulation and democratic organization of socio-ecological systems. Consequently, a property arrangement based on “exclusive and acquisitive” ownership of productive capital will ultimately be unable to sustainably reproduce the socio-ecological just basic structure of society (Schweickart 2012, 213).

#### **6.4.4. From Productivity to Care**

For this reason, I would defend Rawls’ argument for pre-distribution and a property-owning democracy, but I would argue that an *ex ante* distribution must be based on something other than “productive capital” for overcoming domination and the self-organized satisfaction of needs. As can be expected, my answer to this problem is the access to commons and the practice of commoning in the form of democratic negotiation over the use of economic resources that are held in common. Yet, because democratically organized activities can also be structured according to perpetual growth, I would argue that it is also necessary to shift our core normative value for economic activities from productivity to care. To do this, I would like to step back and analyze the concept of productivity and ecological limits in relation to the work of John Locke and Adam Smith. Although this jump back in time might appear somewhat anachronistic, I would argue that Rawls’ notion of productive assets appears to echo John Locke’s and Adam Smith’s focus on productivity as a central feature of a legitimate socio-economic arrangement. After examining their arguments, I will then relate them back to John Rawls’ notion of productive assets for a property-owning democracy.

As has already been discussed in relation to Locke, not only labor, but, more specifically, productive labor lays the foundations for the right to appropriate resources. The cultivation of land is, for example, more productive than hunting and gathering because it produces greater yields per unit of labor and land (§41-3). In this respect, labor activities that increase the number of material goods in the world are to be understood as productive. Adam Smith also adopts this normative notion of productive labor and clearly differentiates between unproductive and productive labor. Unproductive labor includes, for example, services performed by “churchmen, lawyers, physicians, men of letters of all kinds; players, buffoons, musicians, opera-singers, opera-dancers” (Smith 1994, 361) – and, obviously, people who care for children, the sick and the elderly. The notion of productivity is therefore limited only to very specific activities, which, in turn,



provide the supposedly “unproductive” people with food, clothes, homes, computers and cars. In contrast to Locke, Adam Smith argues, however, that it is not merely an increase in material goods (use value) that should be described as productive, but also the increase in profits that result from the sales of these goods on the market (exchange value). Their emphasis on productivity is understandable considering the socio-economic realities prior to the industrial revolution. In this sense, the focus on productivity has brought about an immense increase in the output of material goods and monetary wealth over the last two hundred years. The main reasons given for these developments are, firstly, individual private property, which enables the individual to use a specific resource in a manner to increase its yields and then sell the goods for profit. Secondly, the competition between individual producers that results from open markets forces market participants to perpetually increase levels of productivity in order to produce more goods for a cheaper price and thus maintain a competitive advantage. We have already discussed this issue in detail. According to Adam Smith, however, another main reason for the increases in productivity is the division of labor which can more generally be understood as the rationalization of production processes. This argument lies at the beginning of Adam Smith’s book *The Wealth of Nations*.

Therefore, for us to understand where the increase in productivity in modern economies comes from, I would like to analyze Adam Smith’s argument for the division of labor in more detail and, more specifically, his famous example of the pin maker. Adam Smith argues that the output of pin production could increase greatly if it were not one person who performed all the tasks to produce a pin, but if, instead, the process of pin-making were divided into numerous steps that would then each be executed by a different single person. By dividing up the labor between many people, each laborer becomes a specialist for one single activity, which increases the efficiency of the work process for making a single pin, ultimately increasing the number of pins that can be produced in the same amount of labor time (e.g. one day). Lastly, Adam Smith notes that further efficiency gains can then also be achieved through the use of machines. This is the usual story that is told when discussing increases in productivity through rationalization processes and specialization. What is noteworthy is that the story being told is linear and progressive: There is a beginning and an end, and in the end we have more than in the beginning. So where does this “more” come from?

To understand productivity from a socio-ecological perspective, we must shift our focus from the linear process of production to the reproduction of life in ecosystems. Here, we must also note that the amount of matter and energy on earth remains more or less constant over time. From this perspective, the creation of wealth merely implies the reconfiguration of existing matter and energy into goods that we then, in turn, define as wealth. For example, the amount of metal in the world before and after the production process has remained the same. The increase in the production of pins simply means that more metal has been extracted from the earth and is transformed into pins within a shorter period of time. Let us call this the “nature side” of the equation. In this equation, however, we must also include the wood or coal that is burnt in order to change the form of the metal. It can generally be assumed that the increase in pin production would require an increase in use of wood or coal. Today, the source of energy would be oil, gas, nuclear energy, solar energy or wind energy. On a side note, all these energy sources have a material base and effect the environment in specific ways, such as, for example, the materials to build solar panels and wind turbines. But let us leave the question of new “green” sources of energy out of the picture for the moment. In Adam Smith’s case, the accumulated energy in the wood or coal is released into the air in the form of carbon dioxide, which is then transformed back into oxygen by plants through the process of photosynthesis. While trees can grow back, the cycle of coal (or oil) formation occurs over hundreds of thousands, if not millions, of years. The point I wish to make here is that what is often understood as increases in productivity is not only the transformation of specific resources into use or exchange values, but also the release of accumulated energy into the atmosphere. More specifically, the increases in productivity are not only based on the rationalization of labor processes, but also dependent on the ability to release stored energy from coal and oil (Wrigley 2004, 68-86). Expressed in somewhat different terms, it is not only labor, but also the exploitation of large amounts of the gifts of ancient “buried sunshine” (Mitchell 2011, 12) that allows humans to increase productivity and “grow”.

There is also, however, the “social side” of the equation. In a first step, this requires us to look at the type of labor that is involved in this production process. Because Adam Smith is discussing a market economy, we may generally assume that he is talking about wage labor. From a Marxist perspective, the important point here is that the wage laborer had to sell his or her labor at a price lower than the amount of money that is realized

through the sales of the produced goods. One central reason for the low wages is the competition between the large numbers of people dependent on wage labor for their survival. This forces wage-dependent people to accept incomes that (barely) cover their costs of living, even though the employee's exerted labor power exceeds this value. The difference between the exchange value for the wages of the laborer and the realized exchange value in the sale of goods produced, for example, in one day of labor by the employee is, generally speaking, what Marx understands as surplus value (Marx 1982a, 293-306). According to Marx, this surplus value explains where the "more" is derived from at the end of the production cycle, which he symbolizes as M-C-M' (money-commodity-more money) (ibid., 247-256). From this perspective, it is not necessarily the division of labor, but more precisely the wage contract that enables the employer to legally appropriate and accumulate the surplus value of productive wage labor. It can therefore be said that the rate of rationalization will be intensely pursued, not by the laborers, but rather by the employers, who will then (initially) profit from the increases in productivity.<sup>83</sup> Interestingly, much later in his work *The Wealth of Nations*, Adam Smith admits that there are negative social consequences which result from too much specialization, in which "the [specialized; LP] laborer becomes as stupid and ignorant as it is possible for a human creature to become" (Smith 1994, 840). Understood within our socio-ecological framework, this implies that productivity gains should be conceived as the time and energy extracted from the employee by the employer, making the employee exhausted and "stupid". Hence, aside from the extraction from nature, it is also the exploitation of people that enables labor activities to be more productive and, ultimately, transforms this increase in productivity into increases in accumulated wealth.

It might be argued, however, that in a property-owning democracy this problem would not occur, because people have access to resources in the form of productive assets. Here, it can be argued that this fact would free individuals from entering wage labor relationships involuntarily. Thus, we could say that in such an arrangement asymmetrical wage labor relationships would not exist. Furthermore, it could also be

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<sup>83</sup> I say "initially" because the gains only occur when a producer rationalizes his or her production process before the competitors follow suit. In that time, it can generally be assumed that consumers will buy the cheaper products from this more efficient producer. Marx calls this the "extra profit" (Marx 1991, 142) and compares it to the average surplus value generated through society's average rate of productivity, otherwise also defined as the socially necessary labor time that is required to maintain in order to survive on the competitive market.

contended that because the individual possesses productive assets, she could become a co-owner of the enterprise. This would provide the individual to have rights to the surplus value that otherwise would have been appropriated by the employer. It is often assumed that such a democratic enterprise would hinder or even eliminate exploitation. Although this is partially true, if the enterprise exists on a competitive market, the necessity to perpetually increase productivity would remain in order to satisfy the changes in the “socially necessary labor time” (G.A.Cohen 1979). Thus, the necessity to perpetually rationalize one’s labor processes through new technology and increased specialization would theoretically also persist. If this is not achieved, it can be assumed that the enterprise would not be able to survive on the competitive market. This would then simply imply that the workers must exploit themselves. We can understand self-exploitation here as the exertion of more energy than is required for the regeneration of the mind and body. The problem of specialization can be interpreted here as the self-inflicted one-sided development of one’s capacities, which demands the suppression of other desired activities and the degeneration of these capacities. We already touched on these problems in our discussion of the tragedy of the market in relation to burnout. To be fair, a recurring and just pre-distribution of property would slow down the pace of this process, but it would nevertheless still occur. The only difference would be that there is no employer to blame. Instead, the exploitation would be self-inflicted and enforced through the market dynamics that induce accelerating productivity gains. Here, we are reminded of Adam Smith’s disciplining mechanism of the open and competitive market.

Another aspect of this “social side” of the equation of productivity is the specialization of people towards performing reproductive care work outside of wage labor relationships, be this in the household, the community (e.g. care for the unemployed) or for the environment (e.g. against pollution). Although we have already discussed this, it is important to note again that the “free pass” given to “productive people” puts more caring obligations on those people performing supposedly “unproductive” activities. The amazing gains in efficiency through the division of labor have therefore also divided the social world into those who are rational and productive and those who are emotional (or, from a purely economic perspective “irrational”) and caring. From the linear perspective of output gains, the former is obviously the more valuable; from the systemic perspective of reproduction, the latter is essential for survival. But the point is

not to say which of the two is “better” – both are valuable in their own respect and satisfy different needs and desires of individuals, communities and ecosystems. The point, however, is to emphasize that gains in productivity always have social and ecological costs that, in turn, need to be tended to and taken care of. Or, put somewhat more critically, the gains in productivity do not result from the activity of productive individuals, but rather from the extraction of matter and energy from entire socio-ecological systems, which then crystallizes in the form of individual private property while it increases in output. Here, we are reminded again of Garrett Hardin’s “double P – double C” game, in which profits are privatized and costs are communalized (Hardin 1993, 237-8). What some people interpret as productive increases in the “wealth of nations”, others experience as the depletion of their energy reserves.

That being said, the point is not to get rid of the division of labor or all forms of growth. These few examples were merely presented to demonstrate that all increases in productivity have a specific “material” base (matter, energy, time) that cannot be eradicated from the equation. Increases in productivity *ex nihilo* do not exist (ibid., 70-76). This is not to say that all increases in productivity are based on exploitation. Nor should this insight imply in any way that John Rawls (implicitly) supported exploitation. That would obviously be false. But Rawls’ emphasis on productive assets and capital leaves the question of where productivity gains are supposed to come from unanswered (Schweickart 2012, Alperovitz 2012, Williamson 2012, 303). I believe this to be a serious problem in Rawls’ theory of property-owning democracy that must be dealt with. This short discussion of the origins of productivity gains has merely attempted to make the point that productivity cannot perpetually rise without having serious (negative) effects on society and the environment. In relation to our discussion of labor and productivity, this implies that we must shift our understanding of economic activities and property arrangements from one based on productivity to one revolving around cultivation and care.

This emphasis on care in economic activities might initially appear problematic, because care is often interpreted as an unproductive activity. But this does not imply that labor would then be *unproductive*, but rather that productive activities would not solely be based on a linear logic of the maximization of material wealth. Instead, its central normative characteristic would be the concern for the sustainable creation and

reproduction of goods for the satisfaction of common and diverse needs. Along these lines, Sibyl Schwarzenbach also argues in her discussion of Rawls that we should reinterpret labor and ownership according to the concept of care. She explains, “By care is meant that specifically intelligent activity which appropriately responds to the concrete legitimate needs of others with the end of encouraging their autonomous capacities” (Schwarzenbach 1987, 157). Here, the shift is not only from the linear increase in production outputs to cyclical reproduction, but also to the concern and responsibility for the satisfaction of the concrete needs of *others* – be that other humans, living beings or ecosystems. Lastly, concern for others is not abstract – mediated through monetary values such as “capital” – but becomes visible through the concrete activities of caring for the satisfaction of concrete needs in the form of food, housing, education, health, culture or a clean environment. Conversely, it could be said that needs decoupled from the activities of care fall into the illusion of unlimited material growth, which inherently leads to tragedy. In this sense, caring is not an individual and private activity, as it is often understood, but rather a social and ecological activity of cultivation, maintenance, reproduction and regulation that dissolves the boundaries between the private, the economic and the political, on the one hand, and those between culture and nature, on the other.

As can be expected, placing care at the heart of economic activities implies a transformation of property arrangements. Here, I would argue with Sibyl Schwarzenbach that care requires a shift from “exclusive and acquisitive” ownership to what she calls shared “joint guardianship”, which is what we have defined as the commons (Schwarzenbach 1987, 147, 156-7). As already discussed in relation to guardianship, such a commons property arrangement would integrate those largely affected into the management of the economic activities of the specific resource system. This integration would provide individuals with a possibility to voice their concrete needs and collectively negotiate if and how such needs can be satisfied in relation to the needs of others. As is to be expected, such democratic governance systems for resources will often be criticized as inefficient and unproductive. This is the deeply widespread assumption that was already voiced by Locke when he spoke of “common and uncultivated” resources. The fear that an economy based on democratic care would be inefficient and unproductive is, however, partially true. In contrast to Locke, the problem we face today – at least in the north-western hemisphere – is not a lack of

productivity but a productivity that is not compatible with the socio-ecological reality. Or, in other words, an economic system based on perpetual material growth is utopian in a world of limited resources. For this reason, it is necessary to develop some reasonable alternative to such a highly problematic and self-destructive property arrangement geared toward perpetual increases in productivity. By placing democratically organized caring activities at the center of our background structure, the short-term efficiency in *quantitative* output productivity would decrease. That, however, is precisely the point of such a property arrangement. Moreover, such a system could very possibly increase the *quality* of the resource system, the labor activities themselves and the goods being consumed. The shift from productivity to care would therefore connote a shift from quantitative to qualitative growth – a shift from owning more things to leading a more self-determined and fulfilling life. In this respect, the creation of the qualitative good life will become *more efficient* in a commons arrangement. A central reason for this is that people have the possibility to co-determine the (re)production process *ex ante* through democratic negotiation instead of through an *ex post* consumer choice that occurs after the products have been produced and put on the shelf. Democratic negotiation in commons property arrangements thereby also replaces the expensive advertisement industry that attempts to convince people that they should buy the specific goods that are being produced. In this sense, we must interpret my critique of productivity and growth not as a renunciation of either productivity or growth per se, but rather as the opening of the possibility for people to democratically co-determine the criteria, organization and direction of the sustainable reproduction of their resources and social activities. Simply put, we should put institutions that support democratic deliberation and care at the heart of “productive” economic activities. This would be an adequate socio-ecological re-interpretation of John Rawls’ property-owning democracy. Accordingly, the most just, basic structure of society would thus be a commons-creating democracy.

## **6.5. Consumption Goods: Individual or Common Property?**

Up until now, I have argued that the right to the access to resources is a precondition for life and liberty. More precisely, I have argued that a commons theory of property is justified due to the necessity of need satisfaction through the access to resources on which people co-depend. A common property arrangement provides people with the



institutional framework to solve conflicts over these shared vital resources and collectively care for the reproduction of the specific socio-ecological resource systems. This then leads to a central question that we have not properly dealt with yet: Would all goods be considered to be common property in such a property arrangement? And if not, where would the line be drawn between private and common property? In order to answer these rather broad questions, I will in a first step discuss the differences between individual and social activities and productive and consumption goods. With reference to the negative ecological effects of consumption patterns, I will then argue that we must also conceptualize consumption goods as commons. Thirdly, I will demonstrate that collaborative forms of consumption can enable relative material abundance in a world of limited resources.

#### **6.5.1. Different Types of Goods (Part II)**

The question of which goods and resources should ultimately be held, governed and reproduced in common is both a simple and a difficult question. One simple answer could be that I, as a philosopher, do not have the right to determine such things, but rather that the people themselves must decide which goods they want to organize as commons. I do, in fact, believe this to be true because commons are not something that can simply be implemented by philosopher kings or technocrats but require the civic activity of commoning to bring them forth. However, this would be an easy way out of dealing with the problem. Another rather simple approach to the problem would be to declare that all resources necessary for one's existence should be held as commons. But would this include not only the field of wheat, but also the bread that I eat? As we can see, this generalization is very vague and not very helpful because, theoretically, everything could be declared as necessary for one's existence. Thus, my following argument is not to be understood as a list of things that should be held privately or in common, but rather as an attempt to deal with the issue in a somewhat more dynamic and differentiated manner. To begin, let us recall Carol Gould's differentiation between personal and social property. According to Gould, personal property is that which is "required for the individual's own subsistence and self-development" (Gould 1990, 180). In contrast, social property is supposedly that which is "required by individuals in common in order to realize their joint purposes" (ibid.). This appears to be somewhat helpful, but one central problem here lies in the fact that subsistence activities (i.e. farming, food processing, cooking) are often not performed individually, but rather in

groups. In such cases, subsistence resources should actually be understood as social or, rather, common property. Yet, when these activities do occur individually, as they do, for example, in the case of cultivating a small garden lot, it is obviously adequate to understand this resource as an individual one. For this reason, we should not only focus on the differentiation between individual and social activities, but also, as David Held suggests, on the distinction between consumptive and productive property (Held 1995, 263).<sup>84</sup> As already mentioned and along the same line of thought, Elinor Ostrom and Charlotte Hess distinguish between the flow of resource units and the resource systems themselves (E. Ostrom and Hess 2007, 338). Consumptive property and the flow of resource units could be, for example, toothbrushes, apples, bread, underpants, bicycles, coal, personal computers or cash. Production goods and resource systems, on the other hand, would be things such as apple trees or orchards, coal mines, bakeries, factories for toothbrushes, underpants or computers, central processor units or capital. However, we must also differentiate here whether the specific entity is being used individually or together with others in order to determine whether it should be conceptualized as personal or social property. I could, for example, use my bicycle or my computer as a source of income and thus transform a consumption good into one utilized for production (e.g. as a bike messenger or a computer programmer). But this would not transform it into social property, because the activity is performed individually. In this sense, things are not productive per se, but become productive through their specific use. According to my argumentation, the social coordination of these individual activities in an organization (e.g. the delivery or programming services) should, however, be organized in a social and democratic manner, for example as a cooperative, enabling the participants in this specific organization to fairly distribute their individually and collectively generated wealth and to democratically co-determine their organization of labor.

Nevertheless, another problem exists in the juxtaposition of individual consumption and social production. A good that is individually consumed can also be – and, in some cases, *should* be – organized as common property. According to Locke, individual private property enables people to use and enjoy a specific good without the arbitrary interference of others. This enables them to exclude others from the use of the

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<sup>84</sup> David Held also mentions financial property (i.e. capital) as a third type of property. In order to simplify the argument, we will focus on the differentiation between consumptive and productive goods and define financial property as a unit of productive property.

individual private property. In cases of individual consumptive and productive property, this often makes sense. I would, for example, prefer not to share my toothbrush, my underpants, and my shoes with other people. I would also prefer to cultivate *my* small garden lot by myself, ride *my* bicycle and use *my* computer. By declaring these goods as individual private property the negative freedom of the individual is secured and the freedom of other people is not necessarily threatened, assuming the goods are not used in bothersome or harmful ways (i.e. riding over old people on the street with my bike or planning terrorist bombings with my computer). These are the usual examples that are often brought up in discussions *against* common property arrangements. The general point here is that individuals don't want to have to ask the community if they can brush their teeth with the communal toothbrush twice or three times a day or if they can put on a pair of communal shoes every morning in order to go and get the communal newspaper. The problem with this argument is, however, that it leads to the assumption that everything would be held in common because, theoretically, everything has an effect on someone else (i.e. the color of someone's T-shirt might not match the color of my pants, for example). Obviously, these examples are absurd. No one would want such property arrangements. And, yes, such property arrangements would be highly inefficient in dealing with our everyday lives. But no one in favor of commons is, per se, against individual private property in such personal consumption goods. By focusing on these issues, we are being distracted from a more fundamental one that is at stake: The problems of exclusion from or overuse of resources that are central for one's life and liberty. From this perspective, there are strong ecological or functionalist and normative arguments for the sharing of certain consumption goods. Let us now turn to these arguments.

### **6.5.2. Maximizing Consumption and the Population Myth**

Up until now, we have generally argued that resources that affect the larger community and that are necessary for the satisfaction of common needs should be held in common. As previously mentioned, this basically implies that (re)productive activities in resource systems should be organized as commons while the flow of consumption units should be organized as individual private property. Yet let me introduce an example that questions this dichotomy. Let us assume that a person has acquired a relative amount of wealth (for the sake of the argument, we could say within the limits of Rawls' difference principle). The person wants to use this money for consumption goods because the

reinvestment of this money would transform it into productive property (capital). This would, in turn, require that the broader community should also have a voice in the use of this capital. Because this person does not want the community telling them what to do with this money, the person decides to spend most of their money on consumption goods such as, for example, numerous large houses, expensive cars, yachts, private jets and so on. And, to be fair, let us also assume that this person is not attempting to (according to our commons property arrangement) “illegally” use these goods as objects of speculation and thus as “productive goods”. In line with the distinction between individual consumptive and social productive property, this would be legitimate and no one would have the right to interfere with this person’s freedom.

Nevertheless, I would argue that a few problems arise here. Firstly, the logic of this conception of negative freedom implies that individual freedom should be increased if the scope of one’s non-interfered-with reach over the material world is increased. This basically implies that the *more* private consumption goods one has, the better. Although we have shifted from productive to consumptive goods, our focus on the increases in material goods and quantitative growth remains. This inherently leads us to the question whether such a notion of maximization is compatible with the limits of the earth system not only in the sphere of production but also in the sphere of individual consumption. If there was only one such privileged person in the entire world we could say that it does not necessarily matter, because the environment would not be too badly affected. The reality is, however, different: More and more people strive to acquire more and more goods because they interpret the increase in consumptive goods as an increase in freedom and well-being (Rosa 2016, 45). It can thus be assumed that this has very serious negative effects on the environment.

If we remember Garrett Hardin’s argument in the *Tragedy of the Commons*, this ecological problem lies not necessarily in the number of goods people accumulate and consume, but rather in number of people in the world. As he explains in his book *Living Within Limits* (1993), by limiting the growth of population, the smaller number of people should then be able to enjoy more goods. Quoting Malthus this would include, for example, a “daily [...] glass of wine and a piece of beef for [one’s] dinner” (Hardin 1993, 213, 306). Or, more technically formulated: “[A]t a sustainable size of population, the quality of life and the quantity of it are inversely related” (ibid., 213; emphasis omitted).

This is the main thesis of Hardin's *Tragedy of the Commons*, and it is expressed by numerous other ecologists such as Paul Ehrlich in his book *The Population Bomb* (1968) and more recently by the earth systems scientist James Lovelock, who is a patron of the Optimum Population Trust. Lovelock stated, for example,

"Those who fail to see that population growth and climate change are two sides of the same coin are either ignorant or hiding from the truth. These two huge environmental problems are inseparable and to discuss one while ignoring the other is irrational" (Lovelock quoted in populationmatters 26 August 2009).

This conclusion can easily be made by looking at the correlation between population growth and the increase in greenhouse gas (GHG) emissions of over the last 200 hundred years (Steffen et al. 2011, 742, 745). Here, the total amount of GHG emissions is mathematically distributed over the whole of the world's population. According to this calculation, the countries with the largest (increases in their) populations are responsible for the overuse of the carrying capacity of their resource systems. Garrett Hardin portrays this in his lifeboat ethics metaphor:

"Metaphorically, each rich nation amounts to a lifeboat full of comparatively rich people. The poor of the world are in other, much more crowded lifeboats. Continuously, so to speak, the poor fall out of their lifeboats and swim for a while in the water outside, hoping to be admitted to a rich lifeboat, or in some other way to benefit from the 'goodies' on board" (Hardin 1974, 561).

The rather simple moral of this story is that the "rapidly-breeding poor" (ibid., 565) is the cause of the overuse of ecological resources and climate change. In order to save planet earth, we must therefore exclude the poor from the wealth of the northern nations, let the poor people die and, thereby, hopefully limit their ability to reproduce (ibid., 565).<sup>85</sup> According to this argumentation, sharing goods with those who have less simply pours more oil into the fire of population growth and ecological destruction.

I do not want to deny that population sizes do not have any effects on socio-ecological systems. It can generally be assumed that there correlations between the two exist. Nevertheless, the problem with the emphasis on the correlation between population size and GHG emissions is that it neglects and conceals the *distribution* of the specific

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<sup>85</sup> In Hardin's own words: "Every life saved this year in a poor country diminishes the quality of life for subsequent generations" (Hardin 1974, 565; emphasis omitted). He therefore argues that we must "[a]dmit no more to the boat and preserve the small safety factor. Survival of the people in the lifeboat is then possible (though we shall have to be on our guard against boarding parties)" (ibid., 562)

“goods” (wealth) and “bads” (pollution) within a specific group and between groups of people. By looking at the precise distribution of GHG emissions, we encounter, however, a rather different picture. Perceived in this manner, increases in GHG emissions do not necessarily correlate with population growth, but rather with the increase in wealth and, thus, in consumption goods available to individuals. For this reason, environmental scientist David Satterthwaite argues that we should stop using the often-used equation “total impact equals population times affluence times technology” ( $I = PAT$ ). Instead, he argues that we must use the correct equation “impact equals consumers times affluence times technology” ( $I = CAT$ ). Satterthwaite explains,

“It is not correct to suggest that it is the increase in population that drives the growth in GHG emissions, when the lifetime contribution to GHG emissions of a person added to the world’s population varies by a factor of more than 1,000 depending on the circumstances into which they are born and their life possibilities and choices. *So it is not the growth in the number of people, but rather the growth in the number of consumers and the GHG implications of their consumption patterns that are the issue.* In theory (leaving aside the difficulties in measurement), responsibility for GHG emissions should be with individuals and households and based on the GHG implications of their consumption, and not with nations (or cities) based on GHG inventories from the production perspective. *From the consumption perspective, globally, the 20 per cent of the population with the highest consumption levels is likely to account for more than 80 per cent of all human-induced GHG emissions and an even higher proportion of historical contributions.* In considering how to reduce emissions globally, far more attention should be directed to reducing this group’s GHG emissions. And as responsibilities for addressing this are allocated to national and local governments (with city governments having particularly important roles), consider how this 20 per cent of the world’s population is distributed between nations (obviously most, but certainly not all, are in high-income nations)” (Satterthwaite 2009, 564; emphasis added).

As the journalist George Monbiot puts it, “While there’s a weak correlation between global warming and population growth, there’s a strong correlation between global warming and wealth” (Monbiot 2016, 104-5). As we see, the problem is not necessarily large populations, but the great increase of wealth belonging to a small group of people. Their ability to accumulate without limit enables them to consume most of the world’s resources and to consequently produce most of the existing greenhouse gases. For this reason, the political scientists Ulrich Brand and Markus Wissen call this an “imperial lifestyle” (2017) of the wealthy Northern countries, which the sociologist Stephan Lessenich interprets as an “externalizing society” (2016). To put these insights back into

Garrett Hardin's metaphor of his "lifeboat ethics": The reason why the boats are sinking is not, first and foremost, due to population sizes. Instead, the boats of the affluent are sinking due to the heavy load of consumption goods that they have collected. In turn, the boats of the poor are sinking, in contrast, because of the weight of the bads (pollution, deforestation, rising water levels, oil spills etc.) that the wealthy have externalized. Yet, while the affluent can build better and larger boats to carry the load, the others are left to sink.

If this insight is correct, it should have rather important implications for our discussion of property arrangements for enabling life and liberty for all living beings. Firstly, we cannot simply separate production goods from consumption goods. Simply organizing productive resource units as commons and leaving the sphere of consumption intact as a sphere of individual negative freedom does not solve the ecological problems societies are currently trying to deal with. Such a strategy might protect the environment from a supply-side perspective, but it does not answer the problem from a demand-side perspective that results from ecologically destructive patterns of individual consumption. If people continuously demand more goods for the satisfaction of their needs and desires, it remains highly questionable if the production of these goods will also change.

Secondly, although I have previously mentioned that it should not necessarily be a problem if only a few individuals own and use numerous amounts of resources, we have just seen that only a small portion of the world's population (20 percent) produce a large portion of the world's GHG emissions (80 percent). It is to be expected that if we delved deeper into the statistics, we could find that an even smaller group of people is proportionally consuming even more resources than the rest of the world's population (Monbiot 2016, 105-6, Oxfam 2017). From this perspective, it would therefore be false to say that the individual ownership of a bicycle by each person in the world is equally problematic as the private ownership of jeeps, yachts, jets and numerous houses by a few. In this sense, we can say that the *unlimited* consumption of *specific* goods is not simply a "private" matter, but has far-reaching and serious effects on other people and the more-than-human world.



Third, it is also important to note that not only does a small portion of the world's population produce most of the world's GHG emissions, but also that the very poor people of the world produce very little GHG emissions (Satterthwaite 2009, 547). This might sound like good news for Mother Nature – and, to a certain extent, also for the wealthy inhabitants of earth because they can simply slightly reduce their consumption levels so that they are “in tune with nature” and simultaneously hope that the poor will remain poor. But this cynical answer is not only unjust towards those in need, but also highly unfeasible because those in poverty obviously want to improve their living standards and increase their freedom. It can generally be assumed that they also want to realize their rights to life and liberty just as Western societies have done. So how is this fundamental contradiction between consumption patterns based on ever-increasing needs and desires and the limitation of the ecosystems' resources to be solved?<sup>86</sup>

### 6.5.3. Collaborative Consumption and Relative Abundance

Because this is a somewhat grand question, it might be helpful to return to our previous discussion of individual private property in consumption goods in order to answer it. As was mentioned then, the underlying principle was that individuals should be free to enjoy their consumption goods without interference. Personal consumption goods should remain as the last bastion of negative freedom. This negative freedom is often understood as one of the fundamental and basic individual types of freedom that lie at the heart of a liberal political order.

Within this understanding of freedom, it is then often assumed that the larger the sphere of one's negative freedom in consumption goods is, the more options one has to satisfy different needs and desires. Although this might be true, we must also, however, recognize that different goods produce different effects on the environment. Importantly, different *patterns* of individual consumption in relation to different goods produce different ecological effects. The increase in my collection of jogging shoes in

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<sup>86</sup> In this short discussion of levels of consumption, GHG emissions and ecological degradation, I did neglect one important aspect of the complex situation: The ability of ecosystems to *absorb* GHG emissions. If, for example, we had enough trees on earth, our consumption levels could theoretically remain at a certain level or even increase because the plants would absorb the emitted gases. I would, however, argue that it can generally be assumed that high levels of individual consumption are dependent on the deterioration of ecological systems and their ability to reabsorb GHG emissions. The most straightforward example of this is the production of meat with soya feed in large areas where rainforest used to exist. Here, again, we are confronted with the fundamental contradiction between an endless increase in needs and desires and the limits of ecological resources.

order to go running more often is, for example, completely different than the increase in the number of flights I take in order to attend more academic conferences. Yet despite these differences, the maximization pattern nevertheless assumes that the more goods, the better. It is important to note here that it does not matter if these goods are bought with money that I earned through wage-labor on the market or if I have received the means to buy these goods from a state-orchestrated pre-distribution scheme available to all citizens. Depending on the type of good and the pattern of consumption, the ecological effects are the same. As we see, it appears as though we have come across a certain ecological paradox in the relationship between life, liberty and property – irrespective whether we take sides with Locke or Rawls. On the one hand, we can enhance material wealth and individual freedom in the form of consumption goods at the cost of the environment. On the other hand, we could maintain life on earth at the cost of poverty and lack of freedom. Within this framework, it appears as though the needs and desires of humans oppose and contradict the needs of nature.

Where then is the way out of this dilemma? Is humanity simply going to fall into a Hobbesian war of “all against all”? Or will a global state and the managers of production resource systems rigorously limit and equally distribute the consumption goods that each individual is allowed to have in the name of a just eco-dictatorship? Or is each individual required to achieve mastery over their endless needs and desires in the form of self-imposed sacrifice and asceticism? As we see, all these options appear not only unattractive, but also highly unrealistic – except for the possibility of war, that is. What other options do we have then? In order to answer this question, let us return to the basic question of what property rights are actually for. Informal or formal property arrangements intend to regulate the use of specific resources so that people can live in relative peace and liberty. These arrangements should provide people with enough security so that they do not have to be afraid that their dearly held goods will be taken from them. This enables individuals to plan their daily affairs, reproduce their existence and, possibly, lead a good life. As we see, property arrangements are a means to an end, such as security, peace, realizing life-plans and, hopefully, a good life. Furthermore, the freedom involved in this definition is also not an end in itself. Freedom is valuable because it provides people with choices and capabilities; it is a means for people to be able to define and realize their *own* conception of the good life.

Locke's interpretation of this was to define these property rights individually and exclusively: Only if an object is individual private property can the individual consume it. This is the same logic reproduced in the economic categorization of goods as discussed in relation to Elinor and Vincent Ostrom: Private goods are subtractive and rival and can exclude the use and consumption of others. As we already mentioned above, almost all goods could fall into this category. As the term connotes, rival goods imply that the other person is a threat to one's freedom and liberty. But as we have seen, this logic would imply that the increase in life and liberty for all people would then necessitate that everyone had individual private property over an immense amount of goods and resources. Each piece of individual private property provides people with a larger range of freedom to satisfy their needs and desires and to realize the good life. The question remains, however, whether the effort in producing and accumulating these goods in the end provides people with enough time and peace of mind to enjoy a good life.

An alternative interpretation of the right to life, liberty and property in consumption goods could therefore be based not on individual and exclusive rights, but on collectively shared access rights to consumption goods that are held in common. As we have already discussed in relation to the classification of goods, an alternative to the categorization of goods as exclusion, subtraction and rivalry could be inclusion, addition and cooperation. Here, "rival" goods are used and consumed individually but nevertheless held in common, thereby transforming their subtractive characteristic into an additive feature of the good. G.A. Cohen discusses this principle in reference to an often-used example of tools:

"A homespun example shows how communal property offers a differently shaped liberty, in no different sense of that term, and, in certain circumstances, more liberty than the private property alternative. Neighbors A and B own sets of household tools. Each has some tools which the other lacks. If A needs a tool of a kind which only B has, then, private property being what it is, he is not free to take B's one for a while, even if B does not need it during that while. Now imagine that the following rule is imposed, bringing the tools into partly common ownership: each may take and use a tool belonging to the other without permission provided that the other is not using it and that he returns it when he no longer needs it, or when the other needs it, whichever comes first. Things being what they are (a substantive qualification: we are talking, as often we should, about the real world, not about remote possibilities) the communizing rule would, I contend, increase tool-using freedom, on any reasonable view. To be sure, some freedoms are removed by the new rule. Neither neighbor is as assured of the same easy access as before to the tools that were wholly his. Sometimes he

has to go next door to retrieve one of them. Nor can either now charge the other for use of a tool he himself does not then require. But these restrictions probably count for less than the increase in the range of tools available. No one is as sovereign as before over any tool, so the privateness of the property is reduced. But freedom is probably expanded” (G.A. Cohen 2011, 155).

Although there might be a loss in freedom for certain individuals from one perspective, the principle of tool commons or a tool library would clearly increase the freedom of those without the wealth to own all the tools. Cohen continues,

“It is true that each would have more freedom still if he were the sovereign owner of all the tools. But that is not the relevant comparison. I do not deny that full ownership of a thing gives greater freedom than shared ownership of that thing. But no one did own all the tools before the modest measure of communism was introduced. *The kind of comparison we need to make is between, for example, sharing ownership with ninety-nine others in a hundred things and fully owning just one of them.* I submit that which arrangement nets more freedom is a matter of cases. There is little sense in one hundred people sharing control over one hundred toothbrushes. There is [however; LP] an overwhelming case, from the point of view of freedom, in favor of our actual practice of public ownership of street pavements. Denationalizing the pavements in favor of private ownership of each piece by the residents adjacent to it would be bad for freedom of movement” (ibid.,155-6).

As we see, the question of which goods should be held in common cannot be answered in advance, but must be decided through weighing different pros and cons and, most importantly, through practical experiments that deal with different goods. And, as Cohen mentioned, we are not talking about the collectivization of a person’s toothbrush. Nevertheless, the principle can be applied to the use of bicycles, cars, computers, musical instruments, games, gardens, holiday houses, or even one’s own space of living. The point is that in a world in which not *everyone* can have *everything*, sharing goods in the form of commons provides the greatest freedom for the greatest number of people. Here we can see that the normative argument for an increase in the access to more shared goods is closely intertwined with the ecological or functionalist argument for the stability of socio-ecosystems through commons. By sharing the access to these goods, people can increase their freedom without necessarily having to increase the number of goods that exist. Common property in consumption goods thus provides people with a key strategy that enables them to increase relative material abundance in world of limited resources.

But is this the answer to the destruction of the environment: Public sidewalks and a library for tools? No, these are obviously simply some examples of how consumption goods can be held in common. Nevertheless, the basic principle remains rather simple and significant: By sharing goods with others, people can increase their freedom to access and use *diverse* goods while decreasing the overall quantity of goods being produced and consumed. The point, however, is not merely to pool preexisting goods, but also to actively create these common goods with others through the civic activity of commoning. Thus, by pooling these resources, people not only access more goods, but they can also overcome the consumption-production divide by using these goods, in turn, to satisfy their own specific needs and desires. This is what is propagated with repair workshops, 3-D printers and the notion of open hardware (Rifkin 2015, Baier et al. 2016, Siefkes 2008). It is a transformation of individual consumers into co-producers or peer-to-peer producers (Benkler and Nissenbaum 2006) through the equal access to pooled goods, which not only frees people from the necessity to satisfy their needs via the market, but also provides people with diverse possibilities of collective productive or “commoning” activities.

## **6.6. Interim Conclusion**

After this rather long investigation of a commons theory of property, let me shortly summarize our findings. In this chapter, I have generally argued that in contrast to exclusory private property, a commons theory of property is based on access and democratic governance. Instead of dominion, non-interference and labor, common property arrangements uphold the principles of guardianship, non-domination and need-satisfaction. Common property arrangements can thus increase the realm of individual freedom both in the expanded access to resources and through the ability to democratically co-determine their institutional arrangements. They provide people with the institutions to deal with conflicts over shared resources that are necessary for the interdependent satisfaction of people’s common needs. This can be interpreted as an institutional means to care for the sustainable maintenance, reproduction and flourishing of socio-ecological systems.

Put somewhat differently, common property arrangements provide people with a way of organizing life in a world of limited resources that must not lead to scarcity, domination or tragedy. Instead, they enable people to create a relative abundance through a convivial mode of interdependent existence. Relative abundance is, however, not merely created through contracts that pool the limited *quantity* of goods being consumed, but rather through the *qualitative* transformation of the relationships in the web of life. Thus, the other is not primarily constituted as an existential threat, but rather as a peer to jointly realize greater outcomes through an ongoing process of negotiation and co-creation.

As can be expected, some will find that a society based on common property arrangements impose a specific and too narrow concept of the good life. Accordingly, it is often argued that in a liberal society political institutions should be neutral and impartial in relation to the notions of the good life (Dworkin 1991, 127, Gaus 2003, North et al. 2009, 114, Hayek 2013, 169-196). This is often understood as the prioritization of the right over the good (Rawls 1988). As Rawls himself acknowledges, however, no political arrangements are completely neutral in relation to diverging concepts of the good life (ibid., 251). As John Rawls explains in *A Theory of Justice*, “The basic structure of society is bound to encourage and support *certain kinds of plans more than others* by rewarding its members for contributing to the common good in ways consistent with justice” (TJ, 373; emphasis added). As we have seen, individual negative rights in private property provide people with the formal freedom to pursue one’s economic interests without arbitrary interference. The antagonistic structure of these property arrangements, however, inherently leads to maximization strategies and tragedy. In turn, individual positive rights attempt to secure life and liberty by providing equal access to “productive assets”. Yet as we have seen, these arrangements also induce similar maximization strategies. Thus, we can say that the notion of the good life that unintentionally arises in both of these property arrangements is caught in the “straitjacket” (E. Ostrom 2003, 25) of maximization strategies and perpetual economic growth.

That being said, the problem we are facing here, especially in relation to the problems of scarcity, domination and tragedy, is not necessarily one of absolute neutrality, but rather the question of the compatibility of different concepts of the good life. In this sense, the

concept of interdependent freedom in common property arrangements obviously limits the scope of all possible life plans that can be pursued. Its underlying principles of inclusion, negotiated cooperation and care therefore inherently limit life plans that aim to realize exclusion, competition and domination. This much I must concede. But I would also argue that these principles of common property are the foundations of a just, free and sustainable social order. Despite these supposed limitations of the range of choices within such a property regime, the specific plans and choices within such an arrangement are not predetermined. On the contrary, common property arrangements increase individual freedom through an expansion in access to resources and the simultaneous democratic governance thereof. In this sense, it must be emphasized that in contrast to other property regimes, the freedom to alter and co-determine one's social conditions is not merely limited to the public sphere and affairs of the state. Instead, it is extended to the "private" realms of production, consumption and social reproduction. Furthermore, the cultivation of democratic freedom in these everyday civic activities should hopefully open up a "world of possibility" (E. Ostrom 2003, 62) and enable people to collectively organize their lives according to their *own* conceptions of the good life. For it is these everyday civic practices in common property arrangements that are the seeds for a flourishing democratic society and the sustainable reproduction of a just basic structure.



## **7. The Role of the State in a Commons Creating Society**

After having developed a commons theory of property, it is now necessary to turn to the question of the relationship between commons and the state, on the one hand, and the market, on the other. These questions are of great importance because the notion of commons is often interpreted as a form of social organization “beyond markets and states” (Ostrom 2010a, Bollier et al. 2012). As I will demonstrate in the next two chapters, I believe this interpretation to be rather misleading because commons appear to be less of a radical alternative to both the market and the state, but rather as a strategy to democratize these two social arrangements. In general, the aim of this analysis will therefore be to shift our framework of societal organization from one based on the state-market dichotomy to one conceptualized as a commons creating society. In order to flesh out this idea, I will sketch how the state and the market can be transformed through the commons institutions and civic practices of commoning. Let us begin this analysis with the state-commons relationship.

My examination of the state-commons relationship will begin with some general, preliminary reflections on the state-commons relationship. In a second step, I will discuss this role of commons in diverse models of the state, including the monocentric, the minimal and welfare state. After this, I will then develop a better understanding of the notion of the state in a commons creating society with reference to the public goods housing, health care and education. In a final step, I will then discuss the role of the state in developing commons in a non-ideal world. Here, I will touch on these diverse issues: the “urgency” of climate change, the role of commons in “developing” countries, the threat of state oppression and the possibilities of reclaiming and cultivating commons both within and against the state.

### **7.1. Preliminary Reflections on the State-Commons Relationship**

In order to clarify my intentions here, I would like to begin my discussion of the state-commons relationship with some preliminary remarks on the subject. While it might be argued that commons exist as a form of social organization “beyond” and thus independent of the state, I would, contrarily, argue that the state is a central institution

for the realization and maintenance of commons. This claim might appear surprising and fundamentally wrong by those who interpret and experience the state as a hierarchical and oppressive institution and, in contrast, commons as a form of democratic self-governance. Here, the notion of *self*-governance appears to contradict the necessity of an external authority manifested in the state. Yet, the problem with such an antithetical presentation of the state and commons is that it remains caught up in the dualistic Hobbesian model of the state: The monopoly of the use of coercion can only be held by a Leviathan that rules autocratically over society. Here, we must differentiate between the monopoly on the use of coercion, on the one hand, and the form of organization that exercises this power, on the other. As has been discussed previously, democratic self-governance of commons provides us with an alternative means to overcome the Hobbesian belligerent state of nature. From this perspective, a monopoly on the use of force is created through trust, reciprocity and the democratically determined rules and regulations of the commoners. In the words of Anna Stilz: “[T]he democratic state is a joint practice in which we act together to secure a common end, and its unity can be explained on lines similar to the unity of other practices in which we commonly act together” (Stilz 2009, 192). Here, the monopoly of power held by the state must be understood as a form of reciprocal and public coercion. Only through this democratically legitimized monopoly of power can the affected people limit appropriation and free riding and, in turn, realize fair and sustainable social arrangements. While the enforcement of laws by the state can limit the harm afflicted on others and the overuse of resources, the state’s ability to collect taxes is also a central means of alleviating power asymmetries and unequal appropriation possibilities. In its ideal form, we might therefore say that a democratic state can be interpreted as self-governed commons.

In turn, this notion of the state provides us with a reference for our following discussion on how the state can provide access to resources in the form of a commons pre-distribution. This is indeed a very difficult question because it is sometimes assumed that state provision and commons oppose one another. In this case, state provision is normally conceived as a “top-down” activity, while commons are understood as goods that are created, reproduced and managed “bottom-up” by those affected. Furthermore, the notion of state provision of common property is closely associated with the communism of the Soviet Union and its practices of dispossession, coercion and

uniformity. For this reason, the legal scholar Richard Epstein, for example, harshly criticizes the provision of common property by the state:

*“Any insistence, however, on mandatory common ownership is a recipe for disaster: co-owners are not chosen but imposed, so the level of mutual distrust is likely to be high. Disagreement over the common plan of development, or over the division of benefits and burdens, is virtually certain to produce massive forms of paralysis from which there is no escape. A division of the property is ruled out by the inflexible requirement of common ownership; and a sale of the property, or of any interest therein, is not likely to succeed if a sustainable purchaser cannot be found – and who wants to buy into a lawsuit or a family dispute? Boundary disputes are the price paid in order to avoid the governance problems that arise from forced associations”* (Epstein 1994, 36-7; emphasis added).

Although this portrayal of commons is blatantly crude, the critique nevertheless remains somewhat valid: The forced, top-down implementation of a commons regime would most likely lead to tragedy. The necessary state coercion involved in such a transformation of social order would oppose the notion of free association and democratic self-governance inherent in the idea of a commons based society. Therefore, the question arises how the state can provide common goods without “forcing” people to collectivize their property.

Furthermore, the general assumption that commons provided by the state would be uniform must also be considered. This is, in general terms, a widespread critique of the satisfaction of individual needs through the paternalistic state provision of material equality: People are different and do not want to be provided with the same goods – irrespective if these goods are individually owned (e.g. clothes, a home etc.) or collectively (e.g. an education, public swimming pools etc.). The diversity of people requires a choice in the satisfaction of their needs. Therefore, while economic liberals defend negative liberty and the freedom to choose products on the market, political liberals argue that non-dominated positive liberty and the pre-distribution of productive assets can overcome these problems of coercion and uniformity. Both, however, fall into a dualistic understanding of the state and the individual that is typical of the civil tradition in democratic thought: On the one side, there is the state and its background institutions; on the other side, we find the individuals who act within this preexisting framework. What both camps fail to consider, however, is a different and more democratic understanding of the state and public services, which can include the

creation of commons through collective action. That will be the focus of the second section of this chapter. In order to reinterpret public goods as commons, however, let us now recapitulate the relationships between commons and the different models of the state that we have already touched upon in order to then develop our notion of a state-commons.

## **7.1. Varieties of the State and the Role of the Commons**

### **7.1.1. Commons in a Hierarchical and Monocentric State**

As previously discussed, a central figure in the notion of the state is that of the monocentric and hierarchical Leviathan that rules over society. In this model, we will begin with the thought experiment of a Hobbesian, warlike state of nature which can be interpreted as the tragedy of unregulated commons. Hardin's response to this problem was a social contract of "mutual coercion, mutually agreed upon" (Hardin 1968, 1247) and, more precisely, a Hobbesian Leviathan. Yet, while Hobbes' Leviathan was created to protect individual property rights, Hardin's Leviathan was revived in order to regulate the use of common resources. This form of government is what Vincent Ostrom called the "monocentric order". We can either conceive this model rather negatively as a form of eco-dictatorship or, more positively, as a type of enlightened despotism that rules in the name of the good of the people. Although Hardin does not propagate a Leviathan that supports any form of redistribution, we can nevertheless conceive how such a political order could provide commons in the form of public goods. Here, the supposedly neutral and benevolent bureaucracy of the state provides commons in a top-down manner. Examples of such commons could range from education to transport, television, clothing, food and housing. To decrease the costs and increase the efficiency of the provision of these goods, they would, at least theoretically, be created in a uniform manner and administered according to uniform rules. These goods would be defined according to the average statistical values of all individuals combined with the ecological conditions that limit these values. Individual needs and desires could be marginally considered (e.g. in the case of having a mental or physical handicap), but would be largely ignored (e.g. in the case of preferring a freestanding home with a garden instead of an apartment).

I do not believe that I need to discuss the problems of such a political regime in detail once more. Nevertheless, let me summarize these problems in five points. Firstly, and as previously discussed in relation to the Ostroms, without any means of democratic control and accountability, government functionaries are no less prone to corruption than any other humans. Secondly, and regarding the regulation of common pool resources, unitary rules would be defined that do not fit diverse contexts. Thirdly, the monitoring and enforcement of these regulations would entail relatively high costs, making the implementation of these rules rather fragmented and weak, ultimately turning them back into quasi-open access resources. Fourthly, the uniformity of goods cannot take individual needs and desires into account. Equality is understood here as material equality which tends towards material uniformity. And finally, the provision occurs in a paternalistic and technocratic manner, disempowering citizens by transforming them into consumers. Although such state provision might be experienced as comfortable because it frees the individual from many existential problems, it remains questionable how stable such a regime would be if based on this undemocratic and hierarchical relationship. To be clear, this critique is not to be misunderstood as a critique of the state, its monopoly on the power of coercion and public goods per se, but rather as a critique of the highly undemocratic manner in which such goods would be produced and provided for. The general implication of this critique is that people are not truly free if they are simply materially provided for.

### **7.1.2. Commons in a Minimal, Market-based State**

These problems of the state regulation and provision of commons are greatly emphasized by economic (neo-)liberals and libertarians (Friedman and Friedman 1980, Nozick 1999). For this reason, they often argue that the state should be minimalized and the provision of these goods should occur through the market. Let us therefore now turn to the relation of commons and the state in a market-based society. In order to understand this issue, I will focus on the work of Adam Smith and John Locke and attempt to shed some new light on their work.

If we begin with the classical understanding of the commons, we must note that Locke was not confronted with Hardin's problem of overuse, but rather with the problem of *underuse* of resources held in common. Although Locke, perceived there to be an abundance of unowned, common resources in the world (especially, for example, land in

North America), he nevertheless believed that the goods necessary for a comfortable, convenient and good life were rather scarce because they were rare and not very widespread. Furthermore, Locke understood the total surface area of land on earth to be limited and, due to the increase in people and the use of money, able to become scarce. Nevertheless, it appears that the limitation of surface area could be compensated by “depth”. In this sense, I would argue that Locke understood natural resources as a well that could be drawn from without limit. The ability to draw more from nature would have depended, however, on the access to land and on the amount of labor exerted. Hardin, in contrast, explicitly – and, in my opinion, correctly – conceives all natural resources to be limited. The reasons for this shift in perspective are rather simple: While Locke existed in a preindustrial era, Hardin existed in a world that had experienced around 150 to 200 years of high levels of industrial productivity that humanity had never seen before.

As we well know by now, for Locke, each person is originally allowed to appropriate from the unregulated commons as much as he or she can use without letting any of the resources go to waste and in a manner that there are enough resources left over for others. As Locke argues, however, with the introduction of money, individuals can appropriate and accumulate larger amounts of resources and use these “productively” by selling the surplus products for profit on the market. For the other people, the direct access to the commons has become scarce if not entirely annulled. In turn, productivity gains are provided as a compensation for the loss of access to existential resources through the private appropriation. However, because the other individuals no longer directly access their means of subsistence, they are required to enter wage-labor relationships in order to earn money to then buy the goods on the market in order to secure their existence. If we, in turn, add Adam Smith’s concept of the open market to this narrative, the allocation of goods and services would then occur in a self-regulating manner in which supply and demand would, over time, exist in a balanced equilibrium. Even if an absolute scarcity of resources should arise, market exchange and the prices of goods would theoretically provide the best mechanism for their efficient distribution in society, both due to its self-regulating capabilities and due to its ability to reduce highly complex information (e.g. the limited availability of goods and resources) into simple,

comprehensible data (prices).<sup>87</sup> Thus, in a minimal, market-based state it can generally be said that the commons have been privatized and the direct access to resources has been replaced by market mechanisms.

In this general description and similar to Hobbes (but not Hardin), the state was created through a (hypothetical) social contract in order to protect individual property rights. Here, the state can be interpreted as a type of second order legal commons that generated through the pooling of people's individual coercive power. Yet, in contrast to Hardin, the authority of the state should not limit the appropriation of the first order commons, but rather simply ensure the protection of individual private property. Along these lines, Locke, Smith and many others have argued that the state should not interfere in private accumulation of wealth and the self-regulation of the market. The protection or provision of commons is thus limited to a minimum, including the protection of private property rights and the enforcement of contracts by the police, or the protection of peace and national security by the military. For some, such as Adam Smith, the provision of basic common services is extended to those goods where "market failure" occurs. We will discuss Adam Smith's position on this in relation to education later. Aside from these commons of law and security, basic common services often include goods such as education or roads. Both the state and these goods are financed through pooled resources (taxes) that are collected by the state. The responsiveness of the state to the demands of the people is supposedly maintained through two central means: Through the freedom to move property (i.e. capital) freely on the one hand, and, on the other hand, through the ability of the enfranchised population to periodically elect representatives from competing parties. In general terms, this is a minimalist, legalist notion of democracy based on the state-individual or public-private dichotomy of the civil tradition.

As we have previously discussed in relation to both Locke and Adam Smith, there are a few fundamental problems with such social arrangements. Firstly, although life and liberty are secured *de jure* through the protection of property rights, due to the asymmetrical access to resources, they are not necessarily guaranteed *de facto* to all people. Secondly, and in addition to this socioeconomic injustice, even if the property-

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<sup>87</sup> To be correct, the reduction of complex information through the price mechanism is not, to my knowledge, an argument brought forth by Adam Smith, but one especially emphasized around 200 years later by Friedrich August von Hayek.



less have the right to vote and elect representatives and thus ultimately change their social conditions, the dependence of the property-less on wage-labor relationships makes them highly susceptible to having to subordinate their interests to the interests of their employers and the flow of capital. Historically, this dependency on wage labor was a central reason why the property-less were not allowed to vote. The dependency on the movement of capital is what we previously described as a structural constraint of democratic freedom. Third, the priority of negative individual rights also highly limits the abilities and powers of the state to interfere in and influence economic matters in order to alter these property arrangements (J. Cohen 1989, 28). While this argument was originally used by Montesquieu and Adam Smith to defend the freedom of a rising bourgeoisie against the power of absolute monarchs and warring feudal lords, the freedom of property in the form of capital is used by a small elite against the realization of life and liberty for large populations today. Fourth, a highly asymmetrical distribution of property inherently leads to the possibility of capture – and thus corruption – of the state by wealthy individuals. More correctly, we must note that the foundation of the modern state has always been an imperative to fulfill the purpose of the equal protection of the existing (unequal) distribution of private property. In this sense, the state has never been a neutral mediator between conflicting interests that has then been captured by the wealthy, but has rather been a strong protector of property rights and laissez-faire capitalism for those with property in productive resources from the outset. Here, we are reminded not only of Herman Heller's term of authoritarian liberalism (Heller 2015), but also of the dialectic relationship in the state-market dichotomy. While universal individual property rights and the market were presented as alternatives to the absolute power of the state, the Leviathan emerges again, not as an alternative to, but more specifically as an inherent and central component of the self-regulating market.

### **7.1.3. Commons in the Welfare State and a Property-Ownning Democracy**

One historical and theoretical answer to the problems of a minimal, market-based state is that of the welfare state and, more recently, Rawls' notion of a property-owning democracy. In most general terms, both models aim to mitigate these problems by providing individuals access to resources. These resources can include public goods such as housing, health care and education or more individualized resources such as pension plans and productive capital. Simply put, while the welfare state emphasizes *ex*

*post* distribution schemes, the state in a property-owning democracy supports the *ex ante* pre-distribution of resources. Here, I will firstly discuss the state-commons relationship with reference to the welfare state and then turn to the concept of a property-owning democracy.

In order to grasp the concept of the welfare state, it is important to also understand its historical origins. Importantly, the welfare state did not develop from individual property rights and self-regulating markets. Instead, these socio-economic rights were often realized through struggles of property-less wage laborers against the negative rights of those with property in productive resources (Lavalette and Mooney 2000). Furthermore, these welfare rights were largely answers to the chaos and destruction brought about by a *laissez-faire* capitalism that led to the Great Depression of the 1930s and the Second World War (Flora and Heidenheimer 2009). After the Second World War during diverse types of the welfare state were developed in countries throughout Europe and North America (Esping-Andersen 1990). The aim of these efforts was for the state to provide its citizens with a minimal level of resources in order for them to secure a minimum standard of living and, thereby, to ward off the diverse negative effects or “externalities” of an open and competitive market.

Let us now compare the welfare state to our notion of commons as previously developed in this paper. From the perspective of the commons, the ideal-typical welfare state shares risks of “ill health, old age, disability or unemployment” with “shared savings [...] [often; LP] financed by levies on employees and employers and supplemented by revenue from taxes” (Weale 2013, 45). Additionally, taxation enables the state to pool and redistribute wealth in the form of public goods such as education and housing, if necessary. In this sense, the principles of reciprocity and mutuality that underlie the commons are also fundamental to the welfare system (*ibid.*, 47).

Nevertheless, there are a few important differences between the welfare state and our notion of the commons. Firstly, while some goods are provided for based on a basic right to the access of resources (e.g. education), other welfare goods are largely provided for according to the contributions principle and, thus, according to proportional, distributive justice (e.g. old age pensions, unemployment compensation) (*ibid.*, 46). Here, the ability to receive support is relative to the amount paid and not according to

one's needs. While this might be considered fair in a rather egalitarian society, the principle is problematic when substantial inequalities limit one's abilities to contribute to the pooled resources. Secondly, in line with this argument, I would agree with Albert Weale that the welfare state is therefore a "device of horizontal rather than vertical redistribution", because it redistributes income "across the life-cycle rather than between income classes" (ibid., 46). Therefore, despite these important measures in redistribution, the welfare state leaves the underlying asymmetrical distribution within society relatively untouched (Esping-Andersen 1990, 23-26). Thus, welfare rights can be interpreted as a compromise that provides access to basic goods "as compensation for exclusion" (Brettschneider 2012) from the productive resource systems that were once held in common. Thus, the satisfaction of people's everyday needs is not based on democratically negotiated self-organization by the affected, but is, rather, largely subject both to the arbitrary powers of proprietors and to growth mechanisms inherent to market competition.

Third, due to the underlying asymmetries in property, the distribution of the resources and capabilities enabling people to participate in the democratic co-determination of the welfare state is also highly asymmetrical. In Rawls' terminology, "[w]elfare-state capitalism also rejects the fair value of political liberties" (JF, 138-9). Although the welfare state jumps in to assist and support those in need, people are not provided with the necessary resources to partake in the democratic definition and organization of these common goods. In this sense, welfare can be interpreted as a type of charity that supports dependencies rather than a basic right that enables self-determination. Furthermore, the lack of democratic participation in the provision of these common goods leads to the previously mentioned critique that state-provided goods are quite uniform. Ironically, however, this critique is often voiced not by those demanding the democratization of these common goods, but rather by politicians who co-determine the welfare provision itself. Their answer to this problem is, therefore, not a greater democratization of wealth, but rather a limitation of state welfare and a provision of these goods through the market.

In contrast to this move, John Rawls attempts to deal with these problems of the welfare state not through market mechanisms, but rather through an increase in *ex ante* distribution resources in the form of a property-owning democracy (Rawls 2001). Yet, in

contrast to this differentiation of these ideal models, I would agree with diverse authors that this contrasting juxtaposition does not hold (Jackson 2012, 47-8, O'Neill 2012, 91-2, Weale 2013, Krouse and McPherson 1988). On the one hand, the classical welfare state, for example, also provides the pre-distribution of education and skill training; on the other hand, one-off pre-distribution schemes also require continuing redistribution in order to mitigate unforeseen misfortunes. As these authors argue, the promotion of a property-owning democracy should not weaken the achievements of the welfare state, but rather supplement it with an increase in the direct access to resources that are provided to individuals early on in their lives. In the welfare state as well as in a property-owning democracy, society's resources are continuously pooled, divided up and distributed again. Yet, in a property-owning democracy, the basic right to life and liberty is interpreted as a basic right to access resources at the beginning of one's life, and not only when one is in need. Ideally, this should enable people to self-determine their life plans and transform wage laborers and consumers into active producers, entrepreneurs and investors. Furthermore, it should also provide people with the capabilities to participate in the democratic organization of the state and its background structures.

Despite these great advantages gained by combining the welfare state with a property-owning democracy, a serious problem remains that has already been discussed in our analysis of Rawls: the competitive market's tendency to propagate perpetual economic growth. We have already discussed this problem in detail in the last chapter. Simply put, both the WSC and POD distribution schemes nevertheless encourage people to overuse society's common, socio-ecological resources. For this reason, I would argue that organization of common resources in a welfare state and a property-owning democracy is inherently unsustainable. As an answer to this, we must therefore shift our notion of pre-distribution from individual ownership in productive assets to the access to basic common goods that are held and cared for in common. This implies that we must not only rethink public goods as commons but also the role of the state in the provision thereof. For this reason, let us now investigate the difference between public goods and commons which I will illustrate with reference to the examples of housing, healthcare and education.

## 7.2. Public Goods versus State Supported Commons: Housing, Health and Education

### 7.2.1. From Ideal Theory to Non-Ideal, Civic Co-Creation of Public Goods

In order to understand the role of the state in a commons based society, I will briefly discuss the role of philosophy and philosophical methodology in such matters. Although I do greatly appreciate Rawls' extraordinary and quite radical theory of justice and his notion of a property-owning democracy, he himself emphasizes that his theory of justice is an *ideal* theory (TJ, 216). In a similar manner, I could draft an ideal theory of commons and make a list of numerous common goods that people must have access to in order for them to enjoy life and liberty. The most obvious goods would be clean air and a healthy environment, education, healthcare, housing, food and a basic transportation system. A more ambitious list might include, for example, clothes, culture, childcare services, basic bank services (including credit), travel opportunities and the like. As with any ideal theory, the activity of defining and defending a specific list of necessary (common) goods is a fine and noble task because it provides orientation in a somewhat confusing reality. I believe, however, that there are certain problems with this procedure.

Firstly, a central limitation of an ideal theory is voiced by Rawls himself. In *A Theory of Justice* Rawls discusses the two principles of justice and the guidance that these principles provide for people in non-ideal situations. Nevertheless, he admits that “[i]n the more extreme and tangled instances of nonideal theory this priority of rules will no doubt fail; and indeed, we may be able to find no satisfactory answer at all” (TJ, 267). This concession of the large gap between an ideal and non-ideal theory leads us to the second problem of ideal theories. So long as people do not perceive there to be any connection between their highly complicated “tangled” reality and ideal theory, the focus on ideal theories may possibly disempower individuals, because they only see the great discrepancy between the two. Third, by defining a list of goods that people *should* have, one is automatically making oneself vulnerable to the criticism of being paternalistic. Rawls' strategy for this problem is twofold. On the one hand, he resorts to his original position, which provides him with the legitimation that everyone should come to a similar conclusion. On the other hand, he merely develops a “rough” (TJ, 216) notion of justice and remains somewhat vague by speaking of “productive assets”, while

those who have further developed his ideas have focused on “productive capital” or, rather, money (O'Neill 2012, 80, Hsieh 2012, 156, Freeman 2013, 23, Thomas 2017, 307). Money is handy in this regard because it is supposedly neutral and provides individuals with the freedom to choose how to use it. Yet, as we have already discussed, in the form of invested capital it also conceals an immanent logic of growth.

Fourth, I would concede that by defining an ideal theory one would also make oneself vulnerable to the grave criticism of wanting to implement a utopian design of society in a top-down and technocratic manner against the will of the people. Obviously, I am not stating that this is Rawls' intention. But the focus on the rational, the right and the ideal from an original position leads to the formulation of a somewhat static political order. For this reason, Amartya Sen describes Rawls' ideal theory as “transcendental institutionalism” (Sen 2009, 7), which appears, at least to me, to sidestep non-ideal historical contingencies, democratic deliberation and political resistance. Again, we are reminded of the civil tradition of democracy in which there is a dichotomy between transcendental background institutions of a society and the individual who acts within these institutions. Although Rawls deals with the tension between the state and society in his detailed discussion of the social preconditions for a just society, ideal theory nevertheless demands “strict compliance” from the individuals towards the just background institutions (TJ, 216). This focus therefore neglects not only the question of how just institutions are created and reproduced, but also the non-ideal realities of social inequalities, concentrations of power and the destruction of socio-ecological livelihoods that impede the realization of such arrangements.

For these reasons, I believe it to be necessary to change our perspective when discussing the state-commons relationship and the provision of resources by the state from ideal-theory to what Amartya Sen has coined a “realization-focused” (Sen 2009, 7) approach, which aims at overcoming injustices, domination and exploitation. Sen describes this approach as comparative because it compares diverse existing and emerging institutional arrangements in different contexts and analyzes how specific injustices can be overcome given the present possibilities. Here, freedom, justice and commons are not implemented from without or above, but rather grow out of the “crooked timber of humanity” (Berlin 2013, Kant 2006, 9, 8:23). In order to overcome injustice, Sen argues that we should focus on democratic deliberation and the exchange of arguments of those

affected in both local and global public spheres of modern societies. In line with Habermas and many others, Sen defines this deliberative understanding of democracy as “public reasoning” and his understanding of the state as “government by discussion” (Sen 2009, 321-337). Sen argues that the organization of state and social arrangements is thus not merely dealt with through periodic elections of competing elites, but rather through the perpetual expression of concerns and the exchange of ideas. Through participation in this process of democratic deliberation, people develop their capacities to define the legal framework of the state and the goods that best satisfy their needs. In short, people develop capacities in democratic self-governance and are thus able to overcome injustice and improve their security and social welfare (Sen 2009, 345-54).

I would argue that to systematically realize this, broad public deliberation must be institutionally secured through the inclusion of diverse groups of people in both the legislature and executive functions of government. The integration of citizens in such functions could occur through the inclusion of representatives of different affected groups (ethnic groups, socio-economic classes, consumer associations, neighborhoods, environmental groups etc.), for example by volunteering or allotment. In contrast to free association, sortition is an age-old form of political selection in which people from a population are semi-randomly nominated to take office in diverse political functions (Buchstein 2009, Dowlen 2008). One serious drawback of such a mechanism is the lack of accountability towards the public due to the inability to be reelected. Despite this drawback, sortition and other forms of political inclusion can undermine the capture and corruption of the state by politico-economic elites (Lockard 2003). More importantly, it can enable a broader population to co-determine and participate in the co-production of the goods and services provided by the state. Here, top-down provision of public goods through experts is replaced by or, rather, supplemented with, local knowledge of needs, desires and the contexts of “common” people. Classical examples of such forms of co-determination and co-production are habitat conservation planning, participatory budgeting and functionally specific neighborhood councils for education, policing or health care (Fung and Wright 2003). By considering Michael Walzer’s work, we could understand this as the socialization of the welfare state (Walzer 1988). Within democratic theory, this notion of inclusion is often referred to as participatory democracy (Pateman 1970, Barber 1984, Roussopoulos and Benello 2005) and is an important means of “deepening democracy” (Fung and Wright 2003). Although many



theories of participatory democracy usually go beyond the state, we can argue here that such political inclusion can transform the state provision of public goods into state supported commons through commoning. Last but not least, these practices of commoning enable people to develop the necessary civic virtues that help uphold and reproduce the democratic institutions of the state and of a commons-creating society (Benkler and Nissenbaum 2006).

In summary, the implementation of a democratic, commons-based society requires for us to shift our understanding of the state from ideal theory to a realization-focused approach that deals with injustices and other non-ideal realities through public deliberation and broad political participation. I argue that a “realization approach” would ultimately transform the provision of public goods by the state into commons. In order to better understand this difference between public goods and commons, I will now analyze and discuss concrete examples of housing, healthcare and education. I choose these three goods because there is a widespread consensus in many Western countries and across diverse political camps that they are necessary resources for people to lead a life in liberty.<sup>88</sup> By analyzing these three basic goods, I hope to flesh out the concept of commons and their relationship to the state. Let us begin with the example of housing.

### **7.2.2. From Public Housing to Housing Commons**

In general, public housing is provided for by the state for people in need, which is often interpreted to mean people with low incomes. To understand the problems of public housing, let us begin with the more commonplace critiques of such state provision.

Proponents of economic liberalism often criticize the provision of public housing because it supposedly distorts the self-regulating mechanism of the market. While this might be true, it is also the intention of public housing to provide people who could otherwise not afford a home on the “free” market due to the discrepancy between their

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<sup>88</sup> Along those lines, articles 25.1. and 26.1. of the Universal Declaration of Human Rights state that the access to housing, healthcare and education is considered to be basic human rights (UDHR 1948). Article 25.1. of the Universal Declaration of Human Rights states that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services [...]”. Article 26.1. affirms that “[e]very one has the right to education. Education shall be free, at least in the elementary and fundamental stages” (UDHR 1948).

low wages and the high rents of a home. If we value the satisfaction of needs over the functioning of unregulated market processes, then we can rather easily discard this critique. Another more relevant critique of public housing for our discussion here is the already often-previously mentioned assumption that state services are uniform and unresponsive to individual needs and particular contexts. Although this may be true, one can say, conversely, that unregulated market processes are also unresponsive to the individuals in need. While markets cater to those with more purchasing power, the state caters to those with less – the market as well as the state being uniform and unresponsive in their own profit-oriented or bureaucratic manner. Aside from this common critique, we must also acknowledge the concentration of poverty and, in turn, criminality, that results from both housing markets and more generally, misguided urban planning (Goering et al. 1997, Hui et al. 2015, Freedman and McGavock 2015).

I would say that the answer to these problems in the form of property-owning democracy is to provide people with housing capital so as to enable people to buy and design their own homes wherever they want. All citizens would thus become independent homeowners. Yet some problems arise from this independent housing model, such as suburban sprawl, long travel distances from home to work and the increased dependency on automobiles, to name just a few (Williamson 2010). Another problem is, however, the explosion of the cost of housing through real-estate speculation, which would be increased due to the provision of capital for all citizens. The “neoliberal” and anti-egalitarian interpretation of a homeowner property-owning democracy has been realized since the 1980s in the USA, Britain and many other European countries by deregulating and systematically keeping the mortgage credits low, thereby enticing people with low wages to buy houses that they could not afford in the long run. This “privatized Keynesianism” (Crouch 2009) led to a run on real estate, which created a property bubble and, ultimately, the financial crisis of 2007/8 (Howell 1984, Streeck 2013, Levitin and Wachter 2012, Jackson 2012, 47).

What, then, are alternatives to the problems of uniformity, urban sprawl, poverty and speculation? These problems are obviously very complex and cannot be settled with simple solutions. Yet, I believe that the systemic and process-oriented approach of commons could provide us with insights to fix at least some of these problems. So, what would a commons approach to the housing question look like? As discussed, commons

should not be understood as entities (e.g. public housing), but as a systemic and process-oriented approach to creating common goods. In the case of public housing, this implies, first and foremost, the integration of the potentially affected people into the development and design of a housing complex, a residential area or an entire neighborhood. This determines the groups of people who will live there and, to a much lesser degree, the neighbors. This would mean that people should apply for such an apartment not after, but *before* the complex is built. The prospectively affected should be able to express their diverse needs and negotiate how these can be accommodated within the existing financial and ecological budget. In some cases of public housing, lack of funding is a central problem that leads to uniformity and “ghettoization”. I do not believe, however, that the lack of funds per se must lead to these problems. The problem of “ghettoization” could, for example, be rather easily alleviated by building in the centers of cities, which would mean that city planning would not be left to the planning of real estate speculators and unregulated forces of the market.

In turn, while it is often assumed that a lack of funds must lead to uniform administration and provision, the integration of prospective dwellers into the development and design of such a complex enables people to creatively explore the existing possibilities within certain ecological and financial limits. And where money is lacking, it should be possible for people to literally determine and shape their living conditions with their own hands. Moreover, from a systemic approach, the layout of housing commons would also provide diverse spaces for people to come into contact with each other and develop their living spaces not just before the building process, but also while they live there. This could include shared spaces for shared goods (shared tools and household appliances, a repair workshop, shared cars etc.), but also shared gardens, playgrounds and wild green areas, or possibly even a weekly local market and a café. These examples might sound trivial, but my main point is that the environment would never be entirely brought to completion but always open to the continual and evolutionary process of co-creation that can be adapted and developed by the diverse people that live in such environments.

The belief that the management of such a diverse and creatively assembled habitat would be impossible for the state to manage is, to a certain extent, correct. It would be difficult and costly for state authorities to administer such self-organized groups. That is

one reason why governments often realize uniform goods with uniform rules. But this is where Elinor Ostrom's insights on commons governance come in: The costs of management can be strongly reduced while increasing the robustness of the institutional structure of the ecologically diverse resource system by enabling (and requiring) the dwellers to democratically manage their own housing commons. This would necessitate that both institutional and physical space for public deliberation are provided for and maintained. Responsibilities would be devolved and delegated to subgroups for respective resources, goods and services. More importantly, these groups would provide the institutional possibility to voice problems and mediate conflicts: Such groups would maintain the mutual monitoring and graduated sanctioning necessary to reproduce commons on diverse levels. They would also provide the state with information for the background administration and support of housing commons. But would everyone have to participate in these deliberation and administration processes? The right to receive an apartment in such a housing common could require a commitment of the inhabitant to fulfill certain basic duties that go beyond the mere compliance with basic rules. These could include minimal participation in the co-management and reproduction of the housing common. But the precise definition of these commitments would have to be defined by the inhabitants themselves.

Another question that arises in this discussion is whether housing would be provided for without charge and whether the state or the residents would be the proprietors of the housing commons. This is a central question that differentiates housing commons from public housing. Simply put, a central feature of commons is that the people who use the resource system also manage it. Ideally, the people who use the common also collectively own it in the form of common property or a trust. I suggest that a housing commons could be arranged in the following manner: The land could be owned by the state in the form of a Community Land Trust. The Community Land Trust manages the land in a form of guardianship towards the people of the village or the city and leases the land to the residence of the housing complex at affordable prices. The Community Land Trust would be comprised of politicians, experts, residents and other people from the broader community. The housing complex would then be owned as a cooperative by the people who live there (Conaty and Bollier 2014, 14-16, Lewis and Conaty 2012, 85-110). They would have to buy themselves into the cooperative. Yet, as diverse examples of housing cooperatives and other cooperative enterprises demonstrate, this amount

cannot be extremely high because the prices for real estate are not to be driven up by speculation and the costs of housing are shared by the many residents. For those who lack the necessary funds, there could be other means of accessing this capital – hopefully without falling into debt traps. To avoid this problem of debt, it is also imaginable that citizens would be provided with housing commons coupons of a certain value (e.g. \$20'000) at the age of 18 years in order for them to become a member of a housing commons project. If the cooperative share exceeds this amount, the individual would have to pay the difference. But these are only some ideas of how the specific arrangement could look like. The important point, then, is that people have actual stakes in the housing commons that they live in, which not only cultivates responsibility for the management and maintenance of the commons, but also frees people from the arbitrary interference by external owners such as the state or private investors.

Now, let us analyze the role of the state in such a housing commons scheme. According to my layout above, its role should be conceptualized as the administrative and institutional back-up of a housing commons. The function of the state is to “be there” for the commoners: To initiate and, in certain cases, to support the processes of self-governance, to aid the realization of certain large-scale projects and, most importantly, to democratically develop urban and regional planning policies that provide adequate land for housing commons. The state would, therefore, not manage people and their habitats, but would rather provide people with the opportunity to democratically manage their own lives and habitats. The power of coercion would not be exercised by the state itself in the form of a monopoly, but would provide citizens with the necessary possibilities and powers to democratically self-govern their own habitats. Here, the state is not understood as an authoritarian leviathan, but rather as a partner in realizing the democratic and interdependent freedom of its citizens.

Having discussed the idea of a housing common, let us now turn to the question of how the public provision of healthcare can be conceptualized as and transformed into a common.

### **7.3.2. From Public Healthcare to Health Commons**

The right to health care is generally based on the right to life and well-being. More technically it can be expressed as a “positive right to basic human functional

capabilities” (Ram-Tiktin 2012). While this might sound rather reasonable for some, the public provision of health care is highly contested (Epstein 1997). After discussing the problems of both a market and state provision of health care, I will develop the notion of a health commons in relation to medical research and development, on the one hand, and in relation to the idea of community health center commons, on the other

One central problem of the public provision of healthcare in many, if not most, Western countries is its increasing costs (Qidwai 2013). A common reason given for these substantial costs is the increase in demand for medical services. Garrett Hardin, for example, describes this problem as the “laissez-faire” provision of state services according to the Marxist principle “each according to his need” (Hardin 1977b, 1993, 242-3). Accordingly, he states, “It takes no great insight to realize that hypochondriacs, as a class, will victimize the healthy in such a system” (Hardin 1993, 243).<sup>89</sup> Without testing the empirical validity of this rather cynical explanation, I would argue that the reasons for the rises in costs in healthcare are not merely due to “hypochondriacs”. Other important factors include, for example, the increase in population size, longer life expectancy and higher standards of health. Yet, some academics see the problem not merely on the demand side, but rather in a feedback loop of supply and demand in which greater investments in healthcare lead to improved health (and longer lives, larger populations and higher expectations) and thus require even greater expenditure in medical care. This is what some call the “Sisyphus Syndrome in Health” (Zweifel et al. 2005, Zweifel 2007). Zweifel et al. explain this feedback loop,

“Initially, politicians decide to allocate more resources to health. If effective this intervention causes people that would have otherwise died to survive. With more survivors around, there will be additional demand for health care services. *To the extent that this is financed out of private resources, there is not too much of a problem.* Individuals will adjust their health insurance policies accordingly and allocate a greater share of their income to health care. However, most of these services are covered by public health insurance. Rather than accepting to pay themselves, especially older voters have an incentive to get politicians to reallocate the public budget in favor of health. The increase in health care expenditure (HCE) again creates survivors. Thus, the Sisyphus syndrome can go into its next turn” (Zweifel et al. 2005, 127; emphasis added).

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<sup>89</sup> To be precise, Hardin actually sees the problem in rising expenditure on health care in the in lawsuits of people against their doctors, on the one hand, and in expensive insurance and diagnostic tests as a means to protect doctors against these lawsuits on the other (Hardin 1993, 242-3).

Despite the plausibility of this hypothesis, their conclusion seems somewhat peculiar: The central problem does not necessarily lie in rising medical costs, but more specifically in the increasing *public* expenditure on healthcare. According to Zweifel et al., one solution to this problem is, therefore, the privatization of healthcare. The expenditure on healthcare then depends on one's purchasing power and the "free" choice to spend one's money on one's health. Here, it is assumed that through privatization, supply and demand would eventually balance each other out. Generally speaking, this belief that privatization would yield better outcomes in healthcare has become increasingly popular since the 1980s in many Western and non-Western countries (Collyer and White 2011).

The problem here is, however, that agents competing on an open market must pursue profit-maximizing strategies in order to survive economically. It can therefore be assumed that the profit maximization strategy would therefore not lead to a decrease in costs for healthcare, but rather to an increase in costs. The reason for this is that private firms who are in the medicinal and pharmaceutical industry are not necessarily interested in lowering private expenditure on health services and products but, instead, in the perpetual increase thereof. Aside from using their monopoly power in patents to raise the prices of drugs, this is also achieved by developing highly specialized and exclusive treatments for those with greater purchasing power. Similar to the housing market, this implies that medical and pharmaceutical companies are not interested in the needs of those in need, that is, of those with ill health and little money. The necessary care for these people would therefore be allocated to charity organizations or, as is mostly the case, to untrained and often already overworked family members of the less well-off. However, in other cases, these people in need will not receive any care services or medicinal treatment. A privatized healthcare system would thereby not be fulfilling its proper function of providing all people with adequate healthcare services. Instead, good health would become a means of social distinction and possibly even a luxury good for the rich.

However, and more fundamentally, a healthcare system that is structured according to profit maximization is, ironically, not necessarily interested in a long-term and sustainably healthy society. This is not to say that general levels of health in Western countries have not increased over the last two hundred years or that pharmaceutical



and biomedical corporations produce malfunctioning or harmful drugs. The point being made here is another. The reason for this underlying disinterest of businesses in a substantially healthy society lies in the problem that if everyone were healthy, people wouldn't go to a doctor or need drugs. Sales would sink and profits would plummet – and people would lose their jobs. The underlying and long term interest of a profit-oriented health industry is therefore not healthy citizens, but, rather, sickness and a perpetual increase in desire for more medicine and more healthcare services (Brownlee 2007). Stated somewhat crudely, profits feed off the sick.

However, the described problem is not limited to an entirely privatized provision of healthcare. If profit-oriented corporations provide the drugs, machines and material infrastructure for a public healthcare system, the supply-side problem of perpetually rising healthcare expenditure remains. This problem is otherwise known as the medical-industrial complex (Relman 1980, Wohl 1984, Geyman 2004, Moskowitz and Nash 2008, Ehrenreich 2016, 39-77). Here, we are reminded again of Hardin's "double-P double-C game" in which the profits of the health industry are privatized while the costs are communalized. As we see, with a background arrangement based on profit maximization, both private and public systems are unsatisfactory and lead to rising costs in health – either at the cost of increasing public expenditure or at the cost of an unhealthy and run-down lower-class population. Contrary to Zweifel et al., we can therefore conclude that it is not simply public spending that leads to the "Sisyphus Syndrome", but also a profit-oriented healthcare system that leads to ever-rising costs for society.

Parallel to the problem of housing, a possible answer to this conundrum could be the conceptualization of healthcare as a common. But what would such a health care common look like? I cannot provide a blueprint of what a health care common could look like here. Nevertheless, I can provide a few ideas that might be helpful in understanding how a healthcare commons could be organized. For this, however, let us take a step back: The more general problem we are faced with is how to create a healthy society that cultivates well-being instead of a society that values efficiency gains and economic growth. From a systemic perspective, a health care common implies a general and fundamental right to a clean and healthy environment (Weston and Bollier 2013). As Smith-Nonino notes, "Certainly, a de facto public health commons exists in every

municipality that provides clean water, sewage disposal, or subsidized inoculations for communicable disease – services often taken for granted by most citizens” (Smith-Nonini 2006, 233). In this sense, we must emphasize that healthcare is not something that is realized simply through the provision of medication or an operation, but that it is, rather, an ongoing process and interaction of the individual with its socio-ecological environment. While not denying individual responsibility for one’s health, a commons approach sees the individual in a complex web of interdependent relationships that influence the individual’s own well-being and the well-being of others. From this perspective, good health is not merely an individual effort, but also achieved through social arrangements and interactions. In order to understand what this might mean in more detail let us analyze two facets of a health care common: medical research and development and the community provisioning of health care services.

As just discussed, a central problem of profit-oriented health care systems is that they cater to the needs and desires of those clients with greater purchasing power rather than widespread diseases that primarily affect poorer people. This problem is accentuated by another related issue: The privatization of research and development or, more specifically, complex and overlapping patent rights therein. Intellectual property rights are often understood as important incentives because they secure property rights in one’s labor, or rather one’s discovery, and enable people to reap greater benefits from their research and development. The flip side of these patents is, however, that they simultaneously prevent other researchers and organizations from accessing and using the specific knowledge. This is one case of what Michael Heller has coined the “Tragedy of the Anticommons” (Heller 1998, Heller and Eisenberg 1998) or the “Gridlock Economy” (Heller 2008, 49-78). In contrast to the tragedy of the unregulated commons which leads to the *overuse* of resources, the tragedy of the anti-commons leads to the *underuse* of resources. Here, highly fragmented exclusive ownership rights impede innovation that could enable researchers to develop cheaper or possibly even better drugs. It is in this sense that Heller argues that fragmented patents can literally cost lives (ibid., 55).

One commons-based answer to this would be – parallel to the open-source software movement – to organize medical R&D as an open-source health commons where information is shared freely among researchers and health organizations (Tenenbaum

and Wilbanks 2008). In their whitepaper on Health Commons, Marty Tenenbaum and John Wilbank explain,

“We envision a Commons where a researcher will be able to order everything needed to replicate a published experiment as easily as ordering DVDs from Amazon. A Commons where one can create a workflow to exploit replicated results on an industrial scale – searching the world’s biological repositories for relevant materials; routing them to the best labs for molecular profiling; forwarding the data to a team of bioinformaticians for collaborative analysis of potential drug targets; and finally hiring top service providers to run drug screens against those targets; with everything – knowledge, data, and materials – moving smoothly from one provider to the next, monitored and tracked with Fed-Ex precision; where the workflow scripts themselves can become part of the Commons, for others to reuse and improve. Health Commons’ marketplace will slash the time, cost, and risk of developing treatments for diseases.” (Tenenbaum and Wilbanks 2008, 3-4)

However, the point of such open-source health commons would not only be to cut costs or to produce, but also to democratize the medical industry. Here, it can be assumed that the open-source structure of a health commons in research and development would enable more people to participate and collaborate in the “peer production” of more innovative medical knowledge and needs-oriented treatments.

From a more systemic perspective, the democratization of healthcare can also more generally be encouraged by empowering people to take control of individual and social causes of illnesses. On a very basic level, this can begin with preventative health education in schools. With reference to medical training, this could imply the development of a profession of community doctors,<sup>90</sup> who would combine knowledge of family doctors, care workers, pharmacists and therapeutic knowledge. The community provisioning of health care services could, for example, be organized in community health care centers. Here, a community doctor and other care workers would provide basic and accessible healthcare services to the public. Furthermore, the people seeking help in such community health commons would not simply be consumers, but would be integrated in empowerment processes of knowledge diffusion and self-help practices. This could include, for example, groups like Alcoholics Anonymous, in which people with common, widespread, complex problems such as chronic back pains, migraines,

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<sup>90</sup> As an example of such community doctors see, for example, the “barefoot doctors” that used to exist in China (Zhang and Unschuld 2008, WHO 2008).

burnout, (minor) depressions and obesity can discuss their problems and how they deal with them. An important advantage would be that people would learn to listen to themselves and their peers instead of having to entirely depend on expensive experts. Such a community health common could also provide simple health activities led by volunteers that aim to increase people's individual well-being. Because care work is very time-consuming and care workers are rather limited in number, a time bank or exchange circle could be organized in which people could offer their help in simple care services in exchange for other goods or services. But these are merely some fairly concrete ideas of how such a community health common could be organized. On a more general level, the principles of democratic planning and self-organization would lie at the heart of community health commons. This would, in turn, enable affected people to define for themselves how they would like to organize their local provision of healthcare services.

As we see, the cultivation of health and well-being requires, if not a lot of money, then still a lot of time for caring activities. This leads us to the more political side of such a health commons and the necessity of an institutional framework that supports the creation of a healthy society. Although this is often associated with awareness campaigns, a systemic approach to the notion of good health would go beyond the focus on single, isolated problems and would avoid the top-down implementation of certain notions of the good. Instead it would, for example, aim towards opening spaces for people to care for themselves and for others. First and foremost, this must include the limitation of the working day that would provide people with the time for these activities. Other elements of such health policies could include, for example, good pathways for walking and bicycling and parks for people to exercise and relax in. In more general terms, city and regional planning is also an important aspect of the creation of a healthy and ecologically sustainable environment. All of this might sound quite self-evident and mundane, but a commons twist to these policies would entail the democratic integration of the affected people and the democratic co-determination of their environments. Furthermore, a commons approach to health, well-being and public space would involve a transformation of our understanding of public space. From the commons perspective, public space is not understood as a neutral space for everyone and no one, but rather as a common space that is shaped by the people who use it. How these different aspects of democratic participation, common space, community building

and health issues are integrated can be illustrated with the upcoming and rather popular example of urban gardening (Lewellen 2016, Baier et al. 2013, Seitz 2009). As we see, we have moved from the question of health to that of community organizations to that of city planning, which would normally appear to have little to do with one another. The point of the commons is, however, to see the systemic relationships between its individual components. More generally, the democratic integration of the affected people in such processes of community health commons implies that people can define and develop their own understanding of health and wellbeing. But beyond this, it implies that individuals' health and well-being is not only an interdependent component of a healthy society, but also of a healthy and sustainable environment.

In summary, we can conclude that notion of a democratic health commons clearly goes beyond the state provision of basic healthcare services. Nevertheless, its emphasis on open-access medical research and development, on the one hand, and community provisioning, on the other, could provide strategies to improve the health of citizens without perpetually increasing healthcare costs.

### **7.3.3. From Public Education to Education Commons**

After having analyzed the notions of housing and health care as commons now let us turn to our final example: Education. In contrast to housing and health, however, it can generally be said that education is one of the most acknowledged public goods in Western countries. In this section I will compare the notion of public education to an education commons. In order to do this, I will firstly discuss arguments for and against education as a public good. Secondly, I will argue that the access to knowledge is a central aspect of public education. Here, I focus on the problem of the privatization of scientific knowledge in academic journals and argue that scientific knowledge must be organized as open-access commons. In a third step, I discuss how public schooling can be organized as a commons.

#### **7.3.3.1. The Defense and Critique of Public Education**

The general understanding of education as a universal public good is based on the critique of earlier social arrangements, most importantly of feudalism, in which only

aristocrats could afford to educate their children, and the children of peasants and lower social classes learned only those skills necessary to fulfill their occupations. Despite his defense of private enterprise and a free and competitive market, this opinion is expressed rather clearly by Adam Smith. As we have already discussed in relation to Smith, an increase in the division of labor leads to the problem that laborers become “as stupid and ignorant as it is possible for a human to become” (Smith 1994, 840). In the terms of the tragedy of an unregulated commons, the state provision of mandatory public education is necessary in order to overcome the problem of an entirely private education that leads to the exploitation of lower classes. We will come across this problem again when discussing vocational education and the competitive market in the next chapter on markets. According to Adam Smith, a “civilized and commercial society” therefore requires the “education of the common people [...] more than that of people with rank and fortune” (ibid., 841). He continues,

“But though the common people cannot, in any civilized society, be so well instructed as people of some rank and fortune, the most essential parts of education, however, to read, write, and account, can be acquired at so early a period of life, that the greater part even of those who are to be bred to the lowest occupations, have time to acquire them before they can be employed in those occupations. For a very small expense the public can facilitate, can encourage, and can even impose upon almost the whole body of the people, the necessity of acquiring those most essential parts of education. The public can facilitate this acquisition by establishing in every parish or district a little school, where children may be taught for a reward so moderate, that even a common labourer may afford it [...]” (ibid., 842-3)

The aims of a public education are therefore, according to Adam Smith, to educate people in order to make them “more decent and orderly”, “more respectable” and “therefore more disposed to respect [...] superiors” (ibid., 846). Although Smith concedes that the state “derives no advantage” from public education, these qualities do, however, provide for a more stable and orderly society. More generally, educated people are “less liable [...] to the delusions of enthusiasm and superstition” and “more disposed to examine, and more capable of seeing through, the interested complaints of faction and sedition” (ibid.). In turn, public education enables people of lower social classes to be “less apt to be misled into any wanton or unnecessary opposition to the measures of government” (ibid.). Here, we see the enlightened impetus that has continued until

today in which education is believed to create more reflected and critical citizens who, in turn, uphold an orderly and civilized society.

While this basic defense of public education has become widespread since the 18<sup>th</sup> century, its concept has been greatly expanded since then. Today, public education is not simply limited to the basics of reading, writing and arithmetic, but includes general knowledge of history, politics and society and sometimes extends to vocational training, university education and further, adult education. Here, education is not only provided to increase social stability or, in Rawls' terminology, a "well-ordered society", but, more importantly, in order to provide people with "fair equality of opportunity" (JF, 139). Put somewhat more generally, public education should provide people with necessary intellectual resources in the form of knowledge and the cognitive skills of learning that enable them to develop and realize their capacities and to freely choose their occupation (TJ, 243, 374). Similar to Adam Smith, according to Rawls' difference principle, resources in education should be allocated so "as to improve the long-term expectation of the least favored" (TJ, 87). Here, educational and vocational training are defined as central aspects of a property-owning democracy that should be dispersed widely throughout society by the state (JF, 139). As Rawls explains,

"I assume [...] that there is fair (as opposed to formal) equality of opportunity. This means that in addition to maintaining the usual kinds of social overhead capital, the government tries to insure equal chances of education and culture for persons similarly endowed and motivated either by subsidizing private schools or by establishing a public school system. It also enforces and underwrites equality of opportunity in economic activities and in the free choice of occupation." (TJ, 243)

Not only should the access to education resources create a just background structure for a free society, but it should also support the reproduction of the system over time. As Rawls explains,

"Their education should also prepare them to be fully cooperating members of society and enable them to be self-supporting; it should also encourage the political virtues so that they want to honor the fair terms of social cooperation in their relations with the rest of society." (JF, 156)



The role of public education is therefore both an institutional and a moral one: The institutional access to educational resources should support the social cooperation necessary to uphold such a just system. This is, at least, Rawls' ideal theory of a public education provided by the state. Although not always realized in this ideal form, the widespread provision of public education by the state in many Western countries can be understood as an extraordinary achievement.

Despite “the great aspiration” (Oelkers 1989) of these ideals that developed during the 19<sup>th</sup> and 20<sup>th</sup> centuries, public education has been accompanied by its critics since its beginning. As with most public institutions and services, a common “progressive” critique has always been that state education is bureaucratic, uniform and unresponsive to the needs of the children and the community (Oelkers 2010, Hayes 2007). Often, these critiques focus on the disciplining techniques of educational practices and the overall aims of educational policies that produce subservient and diligent workers in the name of economic utility, productivity and growth, but not critical, creative, and free citizens for a democratic society (Dewey 2008, Freire 2012, Illich 1972). Furthermore, and in spite of the widespread expansion of public education since the Second World War, state provision of education appeared to be unable to counter social inequalities. In contrast, numerous studies demonstrated how public schools merely reproduced the inequalities that already existed in society (Bernstein 1973, Willis 1981, Lareau 2003, Bourdieu and Passeron 1990).

Increasingly in Anglo-Saxon countries since the 1980s, this critique of public education was, however, used by “conservatives” to support an economic liberalization of the provision of education (House 1998, Apple 1996, 2000, 2006). Caught in the state-market dichotomy, the only alternative to the top-down state provision of education is therefore thought to be “free choice”, which is interpreted as the introduction of competitive market mechanisms and the privatization of public education (Friedman 1955, 2002, Murray 1984, Walberg and Bast 2003). With David Bollier, we could understand this process as an enclosure of state provided education commons (Bollier 2013, Björk 2017). At elementary and high school levels, this can occur through the influence of corporations on educational policy (including curricula and textbooks) and school campuses (Neumann 2014, House 1998). More generally, a market-oriented public school system focuses on the output and comparison of grades (e.g. PISA), the

competition between schools and, most importantly, the free choice of schools through voucher systems. At a higher level, this can be seen in decreases in public funding of college and university education, higher tuition fees and students' debts in Anglo-Saxon countries (Mortenson 2012, Goodnight and Hingstman 2013). Further effects can include a general increase in the competitive acquisition of external, third-party funds for scientific research in Europe (de Boer et al. 2007, Bolli and Somogyi 2010) and a boom in expensive, private academic journals (Tenopir and King 2000, Guédon 2001, Kranich 2007). We will discuss the problem of these journals shortly. Although not all of these reforms and developments can blatantly be declared as wrong, the general tendency towards privatization of education brings us back to the problem we initially attempted to overcome through a widespread provision of public education: The inequality of access to educational resources. By declaring that the "government has not solved the problem[s] of education because government is the problem" (Maclaury 1990, ix), we end up in the same position we originally found ourselves in: A private provision of education is not interested in the needs and desires of those less well-off. As Adam Smith already argued from a utilitarian standpoint, this is problematic because it decreases society's productive or, for us from a commons perspective, caring capabilities and threatens the social order. From Rawls' normative perspective, this inequality denies the less well-off the opportunity to develop their her capacities. Thus, the privatization of education appears to be something like attempting to put out a fire with burning sticks.

What, then, is the alternative to a top-down provision of education by the state and a more private provision based on competitive market mechanisms? Here, we must again bring in the notion of commons as an alternative to the state-market dichotomy. For education, this generally implies a democratization of governance processes, institutions, the practices and the resources of education. A commons interpretation of education builds on some of these critiques, yet places democracy at the core of its arrangements. To understand what this could mean in more concrete terms, let us begin with higher education and the educational resource information and then turn to governance, institutions and the contents of elementary and high school education. We will discuss vocational education in the following chapter.

### 7.3.3.1. Open-Access Information Commons: Scientific Knowledge and Academic Journals

Higher, university education can generally be understood as a central means of how a society creates experts and intellectuals in diverse fields of knowledge. In the tradition of the Enlightenment, a central aim of universities is to produce scientific knowledge that will hopefully advance people in their understanding of the world. It is assumed that this knowledge will make people more free in both the sense that it will free them from false beliefs and increase the range of possibilities for action. This occurs through the broad dissemination of information and knowledge to the wider public – and the ability of non-experts to access this information. Scientific information is thus a vital resource for political participation, critical deliberation and effective policy-making in democratic societies. In this sense, we can say that universities and scientific information have a public function to educate society.

If we look at the state of higher education and scientific information in many countries around the world today, it is unclear whether universities currently fulfill this purpose. Here however, we will not focus on the well-known problems of soaring university fees and student debt. My focus will, instead, be on what some might consider a sideshow: Academic journals. Simply put, the problem of academic journals is that they enclose and privatize scientific information. The costs of access to individual scientific articles for people who are not affiliated with academic institutions (which is the greater part of the world's population) are generally very high.<sup>91</sup> One reason for these high costs is, largely, the concentration of ownership of academic journals in the hands of a few corporations (Larivière et al. 2015). As can be expected, profits in this field are therefore also very high.<sup>92</sup> But the more fundamental reason for these large profits is that the knowledge is provided to these corporations for free. Importantly, and in contrast to newspapers, for example, the information is not created, reviewed or edited by the journals themselves, but instead provided for free by academics (Bergstrom 2001, McGuigan and Russel 2008). Additionally, the copyrights for the articles are usually

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<sup>91</sup> The price for a single article can go up to \$35 a piece (Monbiot 2016, 194). In 2011, British university libraries spent up to 65% of their budgets on academic journals (Economist 2011) which can range in prices from \$500 to over \$20,000 a year (McGuigan and Russel 2008, Monbiot 2016, 194).

<sup>92</sup> Some estimates speak of a *turnover* of \$10 billion worldwide (Björk 2017, 101), while others have already approximated in 2008 the *revenue* of these companies in North America alone to be \$11.5 billion (McGuigan and Russel 2008). In 2010 Elsevier, the largest publisher of academic journals worldwide, had an operating-profit margin of 36% (Economist 2011).

handed over to the journals (Hilty 2007). Academics, universities and the public must therefore buy their own research back from the corporations that merely package the publicly funded information. It appears, therefore, that private journal publishers extract profit from research communities by enclosing and restricting access to publicly funded scientific knowledge commons (Berg 2012). From a socio-economic perspective and similarly to the problem of research and development in the field of health and medicine, I would argue that the privatization of information can limit collaboration and innovation and lead to the tragedy of an anti-commons – not necessarily between researchers, who often have access to the journals, but rather between the scientific community and the broader non-academic public. Perceived from a socio-political perspective, expensive, private academic journals ultimately undermine the educational function of science and universities for an informed and self-reflective democratic society.

The widespread privatization of scientific information in academic journals is rather particular for two reasons. Not only is the infrastructure and labor for the research often funded by the public. Furthermore, digital information – and knowledge in general – is often considered to be *the* exemplary non-rival and non-exclusory good (Stiglitz 1999, Hess and Ostrom 2007). In our terminology, we could say that digital information and knowledge is highly additive and inclusive. The fact that one person can consume information and simultaneously enable other people to benefit from it makes it an ideal resource to provide in an open-access manner (Verschraegen and Schiltz 2006). The best contemporary example of this is the free online encyclopedia Wikipedia and the Project Gutenberg which can be understood as an open-access information or knowledge commons (Safner 2016). The philosopher Peter Suber defines open access in the following manner:

“Open access (OA) is free online access. OA literature is not only free of charge to everyone with an Internet connection, but free of most copyright and licensing restrictions. OA literature is barrier-free literature produced by removing the price barriers and permission barriers that block access and limit usage of most conventionally published literature, whether in print or online” (Suber 2007, 171)

If we thus understand open access information in this manner, what would differentiate its organization as a public good from a commons? According to Suber, one main difference lies in the author's rights. By putting the work in the public domain, no rights are retained: There are authors, but no legal owners of the text. In contrast, a commons is constituted when the author consents for all legitimate scholarly uses. The author thereby voluntarily gives up certain rights (which they also do when publishing in private journals), but retains the right to block the distribution of falsified or misattributed copies and block the commercial reuse of this (ibid., 171, 179). From this perspective, the intellectual commons is possibly more attractive for authors because they are still the owners of the text, but can still provide the information to a wider public.

Aside from the question of the ownership of texts, a public provision of open-access information differs from a commons provision with respect to ownership and management of its infrastructure. One possibility of a public provision of access to scientific information would require the state to set up and manage open-access internet platforms for the general public. This is often done with in-house government research that is funded by taxpayers. It is questionable, however, whether governments should also do this for academic journals. If we look at other OA projects, Project Gutenberg is, for example, a private non-profit corporation that is financed through donations and managed by the CEO and Board of Directors. Wikipedia is, in turn, a non-profit organization that is administered by a seven-member board of trustees and also funded through donations. For academic journals, it is evident the academic community itself would provide and manage the infrastructure for the open access to scientific information. The existing expenses could be covered by public funds (e.g. in the form of salaries of university and library employees), publication grants and donations. Importantly, open access implies *free* access to information, which means that there would be no subscription fees – for readers or libraries. Yet, because much of this publishing work is already done for free by academics, the remaining costs can be estimated to be rather low. But as Suber says, “[T]here is not just one way to cover the expenses of a peer-reviewed OA journal” (ibid., 174). While the contents, in all of these cases, are provided for in an open-access manner, the management is conducted either through government officials, entrepreneurs, civil society or professional societies. While all this information should be understood as an information commons, I would

argue that open access created through peer production and managed by those largely responsible for and affected by this content should, more generally, be considered commons in their institutional sense. In relation to our four examples, it appears that Wikipedia and open access scientific journals provided by the academic community would come closest to this notion of a commons.

Lastly, however, it must be noted that from the perspective of the access to educational resources, the value of open access to information stands above the organizational provision thereof. The question of how this intellectual resource should be managed is therefore secondary. Despite the existing risks of tragedy in creating intellectual commons (Wenzler 2017, Suber 2007, 183-7), the advantages of a commons over public provision are based on the innovation that results from inclusive user-generated content production and the democratic accountability of its administration. In this sense, an information commons can ideally decrease the knowledge gap between scientific experts and the wider population, not simply by educating the public but also by providing people with the means to participate in and utilize science for the democratic co-creation of their shared, common reality.

### **7.3.3.2. Schools and Schooling in an Education Commons**

After this discussion of the educational resource of information commons, let us now turn to the more general question how public schooling can be organized as a commons.

On the institutional level, this implies, first and foremost, that the people affected by public education should have the right to co-determine the arrangement thereof. Democratic participation must be understood as the answer to top-down uniform state provision of education and as an alternative to market mechanisms and privatization that cater to the well off. By understanding public education as a common, welfare recipients and market consumers are, ideally, transformed into active, participating citizens or, in our vocabulary, commoners. This principle of democratic co-determination can be applied to diverse levels of decision-making: Educational policy at national, state and municipal levels, the administration of schooling districts and the management of individual schools. Because it is often believed that political participation is more difficult on the national level, political participation in educational

affairs is most commonly achieved through organizational bodies such as local school councils, parent-teacher associations and interschool student councils. Another type of organizational body could be a Local Education Forum as discussed by Richard Hatcher, which “would be a body open to all with an interest in education, including of course teachers and other school workers, school governors, parents and school students” and enable these people to “discuss and take positions on all key policy issues” (Hatcher 2012, 37). The general aims of these organizations and instruments are to increase the effectiveness and accountability in the provision of education according to the needs and desires of the affected people. Despite the importance of this idea for the provision of education by the state, I will not focus on these issues because the ideas are not new and there already is a rather large body of international literature on this topic (Golarz and Golarz 1995, Brehony and Deem 1995, Fung 2003a, Lewis and Naidoo 2006, Arvind 2009, Smit and Oosthuizen 2011, Long 2014, Jung et al. 2016). However, it is important to note that despite this emphasis on the local democratic control of education, a national government is necessary to mitigate substantial inequalities between different school districts. Decentralized democratic bodies are incapable of dealing with this problem that arises at higher levels between districts. The question, then, is how democratic participation can be strengthened not only on the local level, but also on the national or even at supranational levels of educational politics and policy making. In general terms, democratic participation should hopefully transform a top-down provision of public education into an education commons structured as a multilayered and polycentric governance system.

Aside from policymaking and the management of schools, it is also necessary to discuss the notion of an education commons in relation to schooling. In most general terms, I would like to emphasize the importance of democratic and ecological knowledge and values for schooling in an education commons. The reason for this should hopefully be rather clear from the preceding discussions. Nevertheless, let me shortly summarize my reasons again. In general terms, democracy should enable people to co-create and co-determine their socio-ecological conditions. The importance of democracy in educational matters is not only due to its instrumental value for overcoming social dilemmas and tragedies, but also due to the intrinsic value of collective action and convivial modes of living. The focus on democracy thereby emphasizes the importance of individual freedom in relation to the freedom of others. This is what we have defined



as ecological freedom: The freedom in, through and against others. The underlying value a democracy should cultivate is thus the recognition and respect for oneself and the other. This reciprocity lays the foundation for the deliberation and negotiation over other social values and the organization of interdependent individual existences in a shared reality. As previously mentioned in our discussion of democracy, this principle of autonomy should, however, be integrated in a larger framework that includes not only the human world but also the more-than-human world. This, in turn, leads us to the importance of ecology in educational matters. Essentially, ecology is a principle that should enable people to recognize environmental limits, understand the relational functioning of eco-systems and negotiate the intrinsic and instrumental value of other interdependent living beings. In terms of norms, ecology should cultivate the values of diversity, reciprocal interdependence, care and sustainability. This is what Capra, Mattei and others have called eco-literacy (Capra and Mattei 2015, 174-8, Kahn 2010, Peacock 2004). As we see, however, ecology and democracy should not be considered to be two separate entities, but rather as complementary means to realize a just and sustainable evolution of life. Thus, the principles of ecology should be combined with those of democracy, ultimately fostering an understanding for ecological democracy in education (Houser 2009).

Let us shortly discuss at this point what that implies for schools and teaching. On the one hand, it would imply that democracy and ecology would be taught at schools as subjects. In many schools, this is already the case: Democracy is integrated into a class called civic or citizenship education, which is sometimes subsumed into history or some other subject; ecology, in turn, is normally taught in geography or biology class. Here, democracy and ecology are solely treated as educational contents or as objects that exist “out there” in the world. I believe this to be the traditional approach to these topics. Although sometimes pedagogically necessary, this approach is somewhat problematic because it reproduces the Cartesian divide between *res cogitans* and *res extensa* or subject and object that underlies our false man-nature dichotomy of our common ecological reality. For this reason, an education commons would interpret democracy and ecology not merely as educational contents, but also as educational forms, as ways of learning. This would imply, on the other hand, that learners do not only acquire knowledge of democracy and ecology, but also experience and practice these principles in an interactive and systemic manner. As John Dewey already argued over 100 years

ago, this means that democracy is not simply taught, but that it is also a way of learning and, more generally, a way of life (Dewey 2008). Similarly, we could say that ecology is not merely something to be learned about, but also a way of learning. A democratic and ecological education would thus attempt to recognize the necessity and importance of each person in collaborative learning processes. Learning would therefore not simply occur as independent *self*-organization, but rather as an interactive and interdependent cooperative process that is negotiated between the diverse pupils and teachers. Admittedly, this notion of cooperative learning is not new (Slavin 1996, Gillies 2007, Johnson and Johnson 2009). An ecological twist to this approach, however, would integrate one's environment into these interactive processes. For elementary school children, this could imply co-designing and helping to build a playground that fulfills their needs and desires – and, possibly, integrates ecological niches for plants and animals (Lozanovska and Xu 2013). For high school students, such an interpretation could be a project-based form of learning in which the school itself is developed towards more sustainability. Here, for example, pupils could plan and organize the installation of solar panels on the school's roof – or they could possibly even learn how to assemble solar panels themselves.<sup>93</sup> In this sense, the aim of this democratic and ecological approach to educational praxis would be to foster engaged citizens who can collaborate with others and develop skills in order to actively co-create and transform their common reality in a sustainable manner.

In summary, we can conclude that an education commons differs from public education in two significant manners. As we saw in the discussion of information and knowledge, an open access information commons would provide the wider public with the access to academic research that is, in turn, managed by the researchers and institutions that generate this information. Secondly, I argued that an education commons would imply that policymaking and the management of schools are democratized. This would increase possibilities of the wider public to organize their education according to their needs and desires. Furthermore, I contended that democratic and ecological knowledge and values should be integrated into schooling. This should provide children and young adults to learn in an individualized yet cooperative manner in interaction with their

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<sup>93</sup> While this might appear to some as too complex and thus unrealistic, the construction of solar panels is learnt and practiced at the "Barefoot College" in Tilinia, India (O'Brien 1997, Roy and Hartigan 2008).

environment. At all levels, the aim of education in an education commons is therefore to empower people to become commoners for a commons-creating society.

## **7.4. Creating Commons in a Non-Ideal World: In and Against the State**

I must admit that my “realization-approach” portrayal of a state supported commons-creating society might appear rather rosy and utopian. Returning to our preliminary discussion of ideal and non-ideal theory, it seems as though I have slipped back into a “transcendental institutionalism” in my comparison of public and common goods. Nevertheless, I hope that this discussion has provided us with a better understanding of the relationship between the state, public goods and commons. The question that now arises is, however, what the relationship between the state and the commons looks like in non-ideal world. Or more concretely: How can such a social arrangement be realized when democratic participation is not given? Does global warming force us to give up our notion of democratic participation in a commons state? And does this focus on local, nation-state answers not forget the large, global picture of immense poverty and ecological degradation in other countries? In this last section on the state-commons relationship I will therefore touch on these issues: the “urgency” of climate change, the role of commons for “developing” nations, the threat of state oppression and the possibilities of reclaiming and cultivating commons.

### **7.4.1. The Urgency of Climate Change**

Form these diverse problems in a non-ideal world that I have just listed, let us begin with the problem of climate change. As we already discussed, there exists an unequal distribution of goods and bads in the world: 20 percent of the world’s population produce 80 percent of the world’s GHG emissions (Satterthwaite 2009). A part of this 20 percent belongs to the middle class in Western countries, while the rest belongs to the affluent people who reside throughout the world. While there might be a growing population that longs for socio-ecological change in the direction that has been portrayed in this book, there are, nevertheless, many people who prefer to cling to their habits, privileges and power. If this is true, the small difference a few experiments in tool sharing, repair workshops, co-housing and democratic city planning would make

appears somewhat laughable. Here, we are confronted with a few concrete and serious questions regarding non-ideal political theory: How can the socio-ecological injustices be overcome that result from this relatively affluent global population? What if a large portion of this population – including many representatives thereof – is not interested in such a democratic socio-ecological transformation? And finally, do we have enough time considering the urgency of climate change? In this section we will focus on the last question.

In the eyes of some, these interrelated socio-ecological problems – and especially climate change – are so urgent that we do not have the time to deal with them through democratic means. Ivo Wallimann-Helmer, for example, explains in his article “The Republican Tragedy of the Commons – The Inefficiency of Democracy in the Light of Climate Change”:

“[A]lthough the normative ideal of republican democracy provides resources to overcome the risk of such tragedy, *it is inefficient all along the line*. It is potentially inefficient both in guaranteeing adequate decisions concerning international agreements for mitigating GHG emissions and with regard to the discussed possible redesign of its institutions to overcome its inefficiency. On a global level, where negotiations on international agreements to mitigate GHG emissions are concerned, respecting the relevance of democratic legitimization in republican democracies makes it very plausible that not all nation-states (democracies) will subscribe. This shows why [...] the intragenerational dimension of climate change should be treated as if it were a tragedy of the commons even though under optimal circumstances it could become a simple coordination problem. It should be treated this way because there is a risk that in republican democracies necessary political decisions are not reached in due time.” (Wallimann-Helmer 2013, 14)

Interestingly, Wallimann-Helmer does not, however, provide us with an answer to this very serious problem. He leaves us hanging at the end of his article with the passage quoted above.

Considering the urgency of the problem and the supposed inefficiency of democratic change, what can be done? One option could be, at least theoretically, a type of eco-dictatorship, as discussed at the beginning of this chapter, yet achieved either through a single democratic vote or a revolution. This is obviously not very attractive because we would sacrifice our liberty for ecological sustainability, yet without being assured that

the dictator will be wise and benevolent. Another apparently more pleasant option might be what John R. Hibbing and Elizabeth Theiss-Morse call “Stealth Democracy” (2004). In a nutshell, their thesis is that people are fundamentally uninterested in politics and simply want to be left alone (ibid., 129). According to Hibbing and Theiss-Morse, the only reason why people would nevertheless choose to participate in politics is to limit corrupt and rent-seeking behavior of politicians. But if these people had the illusory option of “government by non-self-interested elites” (ibid., 130), a majority would choose it. In such an arrangement, we could simply allow some neutral yet good-willed scientific experts who are familiar with the facts of climate change and the importance of equality for our individual and social well-being. Here it is believed – or hoped for – that intelligent scientists would not be dictators, but friendly experts, who would slowly but surely implement the correct evidence-based policies that would turn us into a good and sustainable society in no time. And their benevolent and subtle art of “nudging” (Thaler and Sunstein 2008) would make it *seem* as if we wouldn’t even have to seriously change our way of life or have lost our privileges and power on the way. Such a political arrangement would free people from the time-consuming and dirty conflicts involved in democratic debates and negotiations – providing us with more time for self-development and convivial activities. Ideally, these experts would also implement a robust firewall that would forever shield politics from big money and private interests. This is at least how I envision a stealth democracy.

The obvious problem with such a political model, however, is the same as we confronted with the eco-dictator and as Vincent Ostrom already made clear with reference to the monocentric and hierarchical state: Such neutral and good-willed elites do not exist. Such an arrangement is only attractive if the experts’ opinions correspond with one’s own opinion. If this is not the case, I have no possibility of influencing the policy-making processes. Furthermore, it is highly unlikely that such experts could “peacefully” implement rules and regulations that would fundamentally change people’s lifestyles, privileges and powers without them noticing or resisting. A few examples of such rules and regulations that come to mind could be: A strict limitation of wealth accumulation in the name of equality; the prohibition of real estate speculation in order to provide access to affordable housing for all citizens; the definition of decent minimal living wages and the limitation of working hours so that people have more free time for caring activities; the prohibition of specific things that are ecologically detrimental (i.e. plastic bags,

throw-away coffee-cups, eating too much meat, the creation of new fashion every season, unjustified use of SUVs or flying by airplane etc.); and, lastly, the communalization of individual property in certain consumer goods and in the means of subsistence and production, more generally. Overcoming social and ecological injustices would require at least some, if not all, of these rules and regulations. Nevertheless it is highly unlikely that people would accept these changes implemented from above without much resistance. As we see, even if people deeply desire to be freed from political responsibilities, conflicts, and burdens, stealth democracy is an illusion.

To the reader, the trajectory of the argumentation so far will have appeared to be quite circular: The urgency of the issues involved makes us desire strong national and, even better, international laws that would simply prohibit socio-ecologically unjust activities, while we can generally assume that a large portion of the population in affluent Western countries would vehemently oppose such radical changes. So where is the way out of this conundrum? Assuming an eco-dictatorship or stealth democracy is neither desirable nor realistic, the options we have appear to be somewhat limited. It seems there are no quick answers to these problems. But how should social change occur if more affluent and powerful people resist the loss of their privileges, despite their negative effects on many other people and ecosystems around the globe? We will attempt to answer this problem shortly, but before that let us now turn to another problem in the non-ideal world that has is interrelated with this problem: the global socio-ecological inequalities and the role of the commons for “developing” countries.

#### **7.4.2. Commons-Oriented Strategies in “Developing” Countries**

As we have just discussed, the smaller but more affluent population of the world consumes a large portion of the world’s resources. This is not to say that the more affluent Western countries are at fault for *all* the problems that occur in the rest of the world. Nevertheless, an analysis of the global flows of commodities, capital and greenhouse gas emissions create a fairly clear picture of this global disparity: While the goods (cheap products, capital etc.) flow to the wealthy populations and most often to Western countries in the northern hemisphere of the globe, the “bads” such as pollution and poverty are often externalized to the South. Obviously, there are no simple answers to such complex and historically entrenched problems. Nevertheless, I would assume

that the commons perspective could possibly provide some basic insights in how some of these problems might be alleviated.

In principle, the concept of commons remains the same, whether we are speaking of countries in the North or the South: The commons approach generally entails that the local people dependent on and affected by a specific resource system should have the collective rights in property and the ability to democratically manage these resources (Wenar 2008, Hendrix 2008). In order to minimize rent-seeking corruption, these resources should be held under democratic stewardship towards the larger community and the eco-system (Weis 2015, Westra 2011). This might, however, imply that a community could nevertheless have the right to exploit their resources within certain ecological limits if the entire community desires to do so. The difference to the existing system of “plunder” (Mattei and Nader 2008) would be that the financial returns from this exploitation would not flow to those who are already wealthy, but should go directly to those who are overusing and losing their material means of living.

Thus, the general policy that is proposed here to alleviate poverty in the global South is by “realizing property rights” (de Soto and Cheneval 2006). A good point of reference, here, is the report *Empowering the Poor Through Property Rights* (Cheneval 2008) that was a result of the working group of the United Nations Development Programme and the Commission on Legal Empowerment of the Poor. As this report acknowledges, a main problem in developing countries is that “the absolute majority of the people in developing countries are not [legally; LP] protected in theory or practice” (Cheneval 2008, 64). This makes people economically and politically vulnerable, most notably women, indigenous people and urban slum dwellers (ibid. 65). A main feature of this report is the state recognition of informal or “extralegal property systems” (Cheneval 2008, 66) based on customary tenure and “vernacular law” (Weston and Bollier 2013, 104). This principle is basically a reformulation of Elinor Ostrom’s seventh design principle, which supports the recognition of people’s rights to devise their own institutions (E. Ostrom 2008a, 101). Importantly, the report emphasizes the necessity of a wide “range of possibilities of ownership by individuals, members of collectives, and by collectives” (Cheneval 2008, 87). Simultaneously, the report repeatedly emphasizes the importance of common property arrangements (ibid., 71, 73, 83-4, 87-9, 105). These can be realized through the recognition of existing collectively “indigenous tenure



systems” (ibid., 79). Echoing the work of Elinor Ostrom the political philosopher and rapporteur of the report, Francis Cheneval, writes:

“The majority of the rural poor depend to a large extent on non-arable resources such as forests, pastures, swamplands, and fishing grounds. These resources require careful management to avoid rent-seeking and corrupt practices that result in environmental degradation and economic inefficiencies. The state should enhance the asset base of the poor by enabling community-based ownership and management of private commons, but it will have to play the role of conflict manager among the communities and among individuals.” (ibid., 71)

While these examples focus on the rural poor, in the case of slum dwellers and the urban poor the report supports the promotion of “associative property structures” (ibid., 87). Such associative property arrangements can be created not simply through the formal recognition of their property rights, but also through “leverage by pooling assets” (ibid.).

As the report mentions, however, the process of realizing such property arrangements are not easy. The report mentions a few problems, of which I would like to focus on one specifically: “Protecting customary or indigenous rights while enacting the ability of communities and individual households to explore new economic opportunities” (ibid., 90).<sup>94</sup> This can also be understood as the possibilities of individuals to opt-out of common property arrangements. I believe this to be of central importance, because the support of common property arrangements cannot be interpreted as a top-down implementation thereof. Hence, while I emphasize the importance of commons in order to *enable* ongoing democratic self-governance, it is also necessary to underline the *prior* democratic deliberation over the desired mix of individual and common property. Accordingly, Francis Cheneval writes, “For implementation at all levels, reforms must be based on deliberation and inputs from those that they are intended to affect” (Cheneval 2008, 70). The emphasis on democratic deliberation in the realization of property arrangements is thus central to avoid the implementation of institutions that do not correspond with the people’s needs and environments. Here, we are reminded of Elnor Ostrom’s second and third design principles (E. Ostrom 2008a, 92-3). The report understands this as a “context-based legal reform” (Cheneval 2008, 69) that I would define as essential in all attempts to alter property arrangements and realize commons.

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<sup>94</sup> The other difficulties include: “Identifying communities and evolving practices”; “balancing respect for local decision-making with human rights and accountability”; and the “challenge of capacity and conflict” (Cheneval 2008, 90). I omitted the capitalization of all the main words in these phrases in order to make them more reader-friendly.

Related to the question of the mix between individual and communal property is also the question of the role of the market in such policies. While the UNDP report emphasizes the importance of common property arrangements, it also underlines the importance of markets for entrepreneurial activities and “value addition” (ibid., 74). That being said, the rapporteur also admits that there existed “conflicting views” on the “role of the state [and] the market” (ibid., 75). While some argued that the market provides opportunities for the poor, others emphasized the “fact that market forces marginalize the poor and drive them into misery” (ibid.). In this sense, this ambivalent approach contrasts somewhat with the approach propagated by Hernando de Soto, who largely focuses on the legal recognition of individual private property in order to provide those in poverty with security and the access to markets (de Soto 2001). Considering the problematic effects of individual private property coupled with market access that we have already extensively discussed, I would argue that it is more desirable to support the livelihoods of individuals from a “subsistence perspective” (Mies and Bennholdt-Thomsen 1999) and the structural interdependence of individuals through communal property rights and community wealth building. As in the report *Empowering the Poor*, “[T]hrough sustainable ownership and/or security of tenure individuals and communities becomes more autonomous” (Cheneval 2008, 73). Here, autonomous can be interpreted both as independent from market mechanisms as well as democratically co-determined. This would not prohibit individuals and communities from producing goods that they also sell on the market. Instead, the focus on democratic rights, community building and economic self-sufficiency intends to make people less vulnerable to the negative effects of the open-access, competitive market. Or, again with reference to the UNDP report: “The idea [of associative property structures; LP] is to provide a form of ownership to balance the interests of the individual or family with those of a broader community” (ibid., 87).

While the notion of subsistence might sound somewhat backward-looking here, I in no way intend to imply that the poor should remain poor. Instead, it aims to conceptualize an alternative understanding of sustainable development based on ecological democracy (Kothari 2014, Kothari and Demaria 2017, Kothari 2018). Strengthening democratic practices and institutions within local communities empowers people with the capabilities to then determine how they desire to develop and grow as a community.

Coupled with economic subsistence through common property arrangements this can potentially free people from the necessity of *perpetual* monetary growth. Importantly, however, these strategies of democratically co-determined development do not simply apply to countries of the South but can and should also be developed in more affluent Northern societies.

While this process of recognition might sound grand for people with informal tenure rights and small resources that can be pooled, this is not the case for those without any property in external resources. As Cheneval writes, “Increasing security of property rights will have limited direct benefits for those who do not have any real assets at all” (Cheneval 2008, 105). In order to mitigate this problem of no direct access to material resources, the commission supports not only rental markets and the recognition of informal settlements, but also a community-based land reform (ibid., 105-6). The aim of such a reform would be to provide people with access to material resources or, what they call “real property” (ibid., 105). In order to do this, they suggest people are provided with funds in order to then access resources. Recognizing the potential negative side-effects of a “market-based” strategy, the report argues that the solution is “legally less complicated and politically less sensitive than in compulsory acquisition programmes” (ibid., 106). Although I would absolutely agree with this insight, it nevertheless remains questionable where these funds will come from and if the state has the possibilities and the will to provide these citizens with such funds. The question then arises how substantial property rights can be realized for those without much political and economic power. This problem brings us to our next topic in our discussion of the state-commons relationship: the problems of elite resistance and state oppression in attempts to realize common property arrangements.

#### **7.4.3. Reclaiming the Commons**

As Francis Cheneval recognizes in the UNDP report on *Empowering the Poor*, a central difficulty in realizing property rights for the poor is the “resistance of powerful social actors” (Cheneval 2008, 80). In relation to the realization of commons arrangements, it can be argued that this problem is accentuated, because it conflicts with the prioritization of individual private property and the principles of free trade (McCarthy 2004, Mattei and Nader 2008, Driessen 2008). Moreover, it can be said that this problem

of resistance “from above” exists not only in developing countries but also in more developed countries (Heyn et al. 2007, Gerbasi and Warner 2007). Generally put, the reasons for elite resistance are that the realization of commons arrangements not only limit their appropriation of more wealth but also often require the dispossession of their existing individual private property. Or put somewhat differently, elite resistance is a reaction against the transformation of appropriated resources back into commons. In general, I see two methods of dealing with this problem of resistance and oppression from politico-economic elites and state authorities: confrontation and “interstitial” activities of commoning. In this section we will focus on the strategy of confrontation. But before that let us discuss the role of the state in elite resistance in a little more detail.

It is noteworthy that in comparison to “bottom up” resistance in the form of social movements, it appears as though elite resistance is much less documented. I believe the difficulty in conceptually grasping elite resistance lies in its interwoven structure with the state. While “bottom up” resistance is often visible because it occurs in public spaces, top-down resistance is much more “civilized” and invisible because it results from “investment strikes” (Streeck 2013, 50) and (supra)national governing bodies. This might be a reason why there is significantly less explicit reference in academic literature to the elite resistance to commoning than on social resistance to privatization. That being said, the two can be interpreted as two sides of the same coin. Interestingly, however, the widespread focus on bottom up resistance implicitly naturalizes privatization tendencies and normatively connotes social protest as a resistance to this natural development. I would argue that this naturalization occurs due to the interwoven interests of powerful economic and political actors. Because individuals with more resources can utilize their greater power to influence politicians and politics through non-democratic means, the state and supranational governing bodies are therefore sometimes discretely and illegitimately used as a means to defend individual property arrangements and competitive markets. We already discussed this problem of “capture” in relation to the minimal, market-based state. Here, powerful social actors utilize state authority to uphold the often invisible and seemingly natural background of social arrangements. Attempts to realize common property arrangements are therefore sometimes confronted not only with elite resistance but also with state oppression.

In such cases, “bottom up” confrontation can provide a means to protest against illegitimate social arrangements and grave injustices that are often neglected by politicians, the media and the public. Such confrontation can occur either through the work of NGOs who spread information on such injustices or, more classically, through protest and demonstrations on the street. This latter form of confrontation is a performative and collective means of expressing one’s opinion, yet without reverting to the exchange of arguments. While protest is often understood as undemocratic because it is performative and not based on reciprocal deliberation, it must nevertheless be understood as a democratic means of bringing suppressed issues and conflicts to the fore. More importantly, it is also a means to force powerful actors who free-ride and resist democratic deliberation to the negotiation table (Tully 2014, 70). In our discussion of socio-ecological justice, protest can thus be understood as a strategy to shame and blame people, corporations or institutions for their destruction of livelihoods and the environment. Confrontation could therefore, more generally, be a means to create public awareness of socio-ecological injustices and possibly alter the legal framework to limit appropriation and transform individual into common property.

Although confrontation is often necessary to create public pressure on political representatives to act in a certain manner, the question still remains whether this will suffice for broader social-ecological transformation in general and the development of a commons-creating society, more specifically. In order to deal with this problem, I would suggest that it is necessary to widen our traditional understanding of confrontation to include the practice of “reclaiming the commons” (Klein 2001). “Reclaiming the commons” is generally a practice of legal or illegal occupation and re-appropriation of goods, services and institutions that are considered to be originally held in common yet have been “enclosed” through privatization or nationalization – and, in most cases, a mixture of both, as in public-private partnerships. Historically, this process of “reclaiming the commons” is a phenomenon that has, most likely, existed since time immemorial in struggles of people (“commoners”) against the dispossession of their basic resources by elites. One well-known example of “reclaiming the commons” are the activities and demands of the Diggers – and, to a certain extent, also the Levellers – during the enclosures of common lands during the English Civil War (1642–1651) (Hessayon 2008, Macpherson 2011, 107-159). A less well-known but possibly more significant historical example is the re-establishment of subsistence rights to enter and

use forests for commoners in the Charter of the Forest of 1217, which was a central yet forgotten sub-article of the Magna Carta (Linebaugh 2008, Babie 2016). These activities of reclaiming the commons are not something to be put off as a thing of the past, but must be understood as struggles that are presently occurring all over the world in relation to numerous and diverse private and public goods and services such as water, land, seeds, information, public space, education and healthcare (Łapniewska 2015, Shiva 2005, Harvey 2013, Assies 2003, Wolford 2010, Karaliotas 2016).

In the case of public goods, we might assume that they are already a form of commons, but as our discussion has shown, public goods are often not to be equated with commons, either due to the general lack of provision by the state or due to the lack of needs-orientation and democratic governance by the affected. In cases where “the state” and government officials do not grant their citizens the rights and possibilities to democratically manage their resources, the activity of “reclaiming the commons” becomes a central aspect of commoning in which people take (back) democratic control over the socio-ecological conditions of their lives. This sheds new light on the collective civic activities, which James Tully also understands as “cooperative democracy.” Here, democracy is not limited to deliberation, but is based on the activity of “joining hands and working together” (Tully 2014, 97). The strength of this activity is that it empowers people to take matters into their own hands without having to wait for benevolent government officials to kindly provide citizens with the opportunity to participate in democratic governance orchestrated by governmental officials and within predefined boundaries. Here, commoning must be understood as a constituent power of social movements (Bailey and Mattei 2013) that opens the political field for the democratic redefinition of the boundaries between the private, public and common, ultimately reconfiguring the organization of social reality.

#### **7.4.4. The Interstitial Civic Activities of Commoning**

Because this confrontational activity of “reclaiming commons” can, in some cases, be challenged with severe opposition by the state and politico-economic elites, it would be important to support these activities with more subtle, yet just as important “interstitial” activities of commoning. In his book *Envisioning Real Utopias* (2010), Erik Olin Wright describes interstitial strategies and activities as “various kinds of processes that occur in the spaces and cracks within some dominant social structure of power”

(Wright 2010, 322). The aim of these activities is to “build [...] alternative institutions and deliberately foster [...] new forms of social relations that embody emancipatory ideals and that are primarily created through direct action of one sort or another rather than through the state” (ibid., 324). From a historical perspective, traders and entrepreneurs utilized this strategy to open markets in highly regulated feudal social arrangements (Braudel 1986). Considering the pressing socio-ecological injustices we face today, I would argue that it is therefore of utmost importance to not only focus on the confrontation and transformation of the state, but also on these independent and interstitial activities of commoning. With reference to the inability of the limited political options to deal with these problems within the existing political and legal frameworks and the resulting injustice, I therefore agree with James Tully that

“[t]he remedy to this injustice is not only to exchange public reasons in hopes of influencing governments, for this has its limits. For cooperative democrats, the response is to non-cooperate with this undemocratic mode of production and consumption, to withdraw one’s producing and consuming capabilities from commodification and to exercise productive and consumptive capabilities ‘in common’ in democratically run cooperatives and community-based organizations that are re-embedded in social relationships. Such grass roots democracies then produce and distribute the basic public goods that are privatized under the dominant form of democracy: food, shelter, clothing, health care, clean water, security and so on” (Tully 2014, 91).

In relation to our discussion of Amartya Sen, Tully also mentions that “[t]his tradition [of civic cooperative democracy; LP] is also practice based and ‘realization focused’, yet in a more immediate way, and it works around, rather than within, the basic structure” (Tully 2013b, 223). Obviously, such activities must also be understood as an activity of “reclaiming commons”, yet the focus has shifted from confrontative re-appropriation to the collective creation of commons – irrespective of state support and the existing legal structure.

Here, the goods that we have generally understood up until now as a basic right for the satisfaction of one’s needs and that originally should, in some form or another, be provided for by the state are now provided as commons by the people themselves through collective civic activities. Again, in the words of Tully,



“This is the tradition of democracy as non-violent cooperative self-government: of the people exercising the capabilities of self-government together in their social and economic activities on the commons. This is the classic meaning of democracy: of the *demos* exercising *kratos* (political capacities) in public reasoning *and acting together* for the sake of public goods” (ibid.; emphasis i.o.).

Here, Tully interprets public goods as commons because these goods are created through democratic, collective action. As he emphasizes, this activity is non-violent because the cooperation necessary for democratic self-governance can only occur through non-violent means of communication and interaction. It is clear that one should, however, not over-romanticize these commoning activities because they often arise when people are in distress and misery due to the breakdown of older forms of provision, whether through communal ties, the market or the state (Karaliotas 2016). Yet, whatever the motivation for these activities may be, they still must be understood as a central answer to the deafness and unresponsiveness of the state and politico-economic elites to the basic needs of people. But as we have already discussed, the goal is not for the state or economic elites to paternalistically provide goods and services for people, but for citizens to be able to democratically provide for themselves – ideally with the support of a democratized state and the aid of what we have previously called eco-law.

In this sense, I must reaffirm more generally that democratic and socioeconomic rights themselves were rarely, if ever, simply granted to people by those in power, but were often developed by people in need and finally realized through non-cooperative confrontation with state authorities. For example, the development of the welfare state since the times of Otto von Bismarck should be understood not as a well-intentioned and benign gesture, but as a bribe that was intended to pacify the masses by increasing their loyalty to the state and by simultaneously undermining workers’ demands for more democratic self-management over their conditions of living (Palier 2010, 36-7). Put in this perspective, although the satisfaction of basic needs could be understood as a basic right that should be provided for by the state, state provision can, ironically, if not organized in a democratic manner, easily undermine the democratic skills and institutions necessary for a commons-creating society. For this reason, these interstitial civic activities of commoning are of fundamental importance not only for people to be able to satisfy their own needs, but also to cultivate the experiences, skills and

institutional examples necessary for the widespread development of commoning and commons – both in and against the state.

## 8. Commons and the Market

After having discussed the relationship between commons and the state, let us now turn to a central question that has been touched upon repeatedly yet incompletely so far: The relationship between commons and the market. Since we have already discussed the justification and problems of the open and competitive market, let us only shortly recapitulate these arguments. Most importantly, the open and competitive market was justified so as to bring peace and unleash productivity. Wealth was to be generated through the protection of individual negative rights in private property and through the self-regulation of supply and demand on the market. Yet, while this negative freedom has increased the freedom of individuals with direct access to property in external resources, other individuals have become increasingly dependent on hierarchical wage labor relationships to secure their existence. Furthermore, the competitive dynamic of the open market forces agents to perpetually grow in order to survive. This requires that ever more resources are extracted and individually appropriated from common goods that other people are dependent on, ultimately reproducing the original discrepancy between haves and the have-nots and increasing the deterioration of peoples' socio-ecological habitats. As we have seen, the priority of individual negative rights and the self-regulation of the market also undermine and severely limit people's abilities and possibilities to collectively solve these problems and to democratically co-create and co-determine their shared living conditions.

Therefore, the questions that we face now are, firstly, whether these problems are a result of the market per se or of the specific social arrangements of the open and competitive market. Secondly, we must ask how the concept of commons can provide us with insights that enable us to transform our understanding and organization of markets. To answer these questions, I will begin by analyzing the role of the market in commons literature. After this, I will discuss the relationship between commons and the market from a historical perspective. In a third step, I will develop the notion of a market commons that will, hopefully, provide us with an alternative and democratic concept of economic relationships.

## 8.1. The Market in Commons Literature

Generally speaking, there is no single understanding of markets and the relationship between markets and commons within the literature on commons. After discussing these diverse interpretations, I nevertheless hope to develop a more general understanding thereof within the following analysis.

As we remember, the Ostroms only marginally speak of market arrangements. Elinor Ostrom rarely discusses the market but describes the open and competitive market once as a “straightjacket” that leads to “maximization strategies” (Ostrom 2003, 25). In contrast, Vincent Ostrom defends competitive market arrangements for a polycentric order (Ostrom 1991, 229-231), while he advocates the notion of a “moral economy” elsewhere and the democratic self-management of economic activities (Ostrom 1997, 106, 145). As we see, the Ostroms’ views on the market are of a mixed valence and rather vague.

From Capra and Mattei’s point of view, the legal system underlying the open and competitive market enables people to “exploit and plunder the web of life” (Capra and Mattei 2015, 29). Yet elsewhere, they also mention local farmer’s markets as examples of institutions that exist for the satisfaction of common needs (ibid., 143). In relation to economic activities in general, they propagate a notion of economic democracy or “democratic oversight of the economy” (ibid., 162). Here, it appears that they understand economic democracy as a type of common. Furthermore, they clearly state that a common “may be anything a community recognizes as capable of satisfying some real, fundamental need *outside of market exchange*” (ibid., 150; emphasis added). Therefore, it can generally be said that their stance is highly critical of open and competitive markets or “global capitalism” (ibid., 115-117) – and the legal institutions that uphold these – while defending local markets and the democratization of economic activities.

If we turn to other scholars who work on commons, a similar mixture of views and positions can be found. Yochai Benkler, for example, defines in his influential book *The Wealth of Networks* (2006) individual private property and commons arrangements as

opposites (ibid., 60). Furthermore, he argues that open commons (i.e. information and material infrastructure such as roads and the internet) play an essential role for economic growth in market societies (Benkler 2013). Another influential commons activist and scholar, Peter Barnes, criticizes the detrimental ecological impacts of unregulated markets while maintaining that “[p]rivate corporations and organized commons [should; LP] enhance and constrain each other” (Barnes 2006, 77). He understands this type of market as “capitalism 3.0”, as the title of his book is called, which enables trade within limits (ibid.). In their book *Green Governance: Ecological Survival, Human Rights and the Law of the Commons* (2013), Burns H. Weston and David Bollier are quite critical of the market and also develop the notion of the “tragedy of the market” (Weston and Bollier 2013, 6-15). Accordingly, they argue for the democratic control over economic institutions within commons arrangements. They explain:

“Commoners shall have collective control over the surplus value they create through the collective management of their shared wealth and resources. To this end, commons- and rights-based ecological governance *shall not be cash-driven or market-mediated except with the explicit consent of commoners* and clear rules for personal use and resource alienability. The freedom of commoners to limit or ban the monetization of their shared assets shall not be compromised.” (Weston and Bollier 2013, 277; emphasis added)

According to Weston and Bollier, then, the question whether commons are to be monetized or market-mediated is left up to the commoners. Simultaneously, the role of the market outside of the commons remains undefined.

Other scholars emphasize the antagonistic relationship between markets and commons and openly propagate the end of market arrangements. Similarly to other authors, commons are understood here as “beyond” or “outside” of the market (De Angelis 2007, 240, Bollier et al. 2012). The emphasis here is, however, on the idea that commons are interpreted as a new “cellular” mode of production that will eventually lead us beyond capitalist markets (Euler 2016). Nick Dyer-Witheford, for example, argues in his article “Commonism”:

„If the cell form of capitalism is the commodity, the cellular form of a society beyond capital is the common. A commodity is a good produced for sale, a common is a good produced, or conserved, to be shared. The notion of a commodity, a good produced for sale, presupposes private owners between

whom this exchange occurs. The notion of the common presupposes collectivities – associations and assemblies – within which sharing is organised. If capitalism presents itself as an immense heap of commodities, ‘commonism’ is a multiplication of commons. The forces of the common and the commodity – of the movement and the market – are currently in collision across the three spheres we mentioned before: the ecological, the social and the networked” (Dryer-Witherford 2007, 82).

As we see, there appears to be a strict contradiction of categories in this literature between markets and commons. The antitheses presented in this literature are the juxtapositions of scarcity versus abundance, exclusion versus inclusion, subtraction versus addition, the “commodity form” versus the “commons form”, atomism versus relational systems, competition versus cooperation, productivity versus care, exchange versus reciprocity, hierarchical market monopolies versus decentralized peer-to-peer relationships, profit versus needs orientation and many more (Euler 2016, Helfrich 2012b). Conclusively, commons scholar and activist Stefan Meretz writes that “Markets are not commons – and vice versa” (Meretz 2012). He justifies this point in the following manner: “The fundamental principle of the commons is that the people who create the commons also create the rules for themselves” (ibid.). While commons are institutions that can be democratically adapted by those affected by them, market arrangements are understood as institutions that are abstract and unalterable. As has become clear in my argument previously, I would generally agree with these ideals juxtapositions. Nevertheless, I ask myself whether these dichotomies can be upheld for all economic activities and, more generally, whether markets can be entirely replaced by commons.

Simply put, it seems unlikely to me that the existing problems of competition, inequality, exploitation and perpetual growth can be overcome by replacing *all* market relations with commons arrangements. I find this highly unlikely because, if we assume that life in a common is not entirely autarchic and self-sufficient, there must be interactions with other organizations or commons that produce other goods. It is then often argued with reference to people like Andre Gorz that the dependency on markets – and especially wage labor – could be minimized if people were provided with an unconditional basic income and people could participate in diverse, multiple activities of production (Gorz 1989, 2005). Obviously, the concept of a basic income is very attractive because it can balance the asymmetrical bargaining positions in wage-labor relationships or even free

people from wage labor entirely (Van Parijs 2003, Widerquist 2013). For a commons-creating society, a basic income would be ideal because it would enable people to engage in volunteer care activities and commons-based peer production. While a basic income might lessen the dependency on hierarchical wage-labor relationships, it would not, however, free us entirely from (re)production processes and the exchange of goods and services. The question also remains of who will produce the tools such as sewing machines, fishing boats, pasta machines, computers and cars for these (re)production processes. Here, some people argue that these “convivial tools” (Illich 1973) could be built with 3-D printers (Rifkin 2015) or open hardware (Siefkes 2008), ultimately making a market for such tools and machines superfluous. Although I support these aspirations and endeavors, I nevertheless believe social arrangements without *any* form of exchange between people and groups to be somewhat unrealistic. The answers to this problem of necessary exchange could be Time Banks, Local Exchange Trading Systems (LETS) or “free contributions” which are all forms of exchange – or, rather, contribution – systems that do not rely on money (Amanatidou et al. 2015, Pacione 1997, Siefkes et al. 2016). Again, I must repeat that my argument here is not against the development of these non-monetary exchange systems. The point I wish to make is simply that, despite all my criticism, I do actually believe money and the market to be quite useful instruments and institutions that enable people with different skills and goods to interact with each other without having to exist in compact social relations (Demsetz 2002). I must concede this much to market advocates such as Adam Smith and Friedrich Hayek. Yet, despite this concession, the question then arises of *how* to shape the social institutions of money and the market to satisfy people’s needs.<sup>95</sup> Or, in other words, the question arises if markets can be organized as a common and what this would imply.

Interestingly to me, it appears that this fundamental question is often grossly under-theorized and neglected in commons literature. I believe that this may have something to do with the actual predominance of market relations in our everyday lives. The neglect of the market in commons literature might be due to a desire to change the symbolic framework through which we see and constitute reality. As is well known, it is “the norm” today to perceive reality not as a common, but rather as market relationships. Here, we often interpret reality as scarce, hostile and competitive and

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<sup>95</sup> Because a discussion of money would exceed the scope of this analysis, I will not discuss money, but focus solely on markets instead.



value the world according to monetary costs-benefit analyses. The commons critique of this worldview is often expressed in pejorative terms such as privatization, commodification, exploitation, valorization, marketization and, more generally, economization. In opposition to these negatively connoted processes, the focus on commons is an attempt to enable us not only to “see the commons” (Mattei 2012b) but also to “think like a commoner” (Bollier 2014). More generally speaking, this focus is an attempt to bring an epistemological revolution about that constitutes a commons-oriented reality (Mattei 2013a, 17). Although I agree with all of these critical analyses and intellectual efforts, I nevertheless believe that if we disregard the question of the precise role and organization of markets in a commons-creating society, we might be disregarding the elephant in the room. I believe it necessary, therefore, to not only “reclaim the commons”, but also to “reclaim the market”. My point is that by understanding the market as a commons we can, in turn, justify the re-appropriation, democratization and transformation of this dominant social institution.

To understand this relationship between markets and commons and how markets could be interpreted as commons, I would like to back up a little and discuss the historical development of open-access competitive markets.

## **8.2. Enclosing Commons and Opening Markets**

A widely-quoted account of the development of a competitive market economy has already been discussed: John Locke’s somewhat idyllic portrayal of the individual appropriation of commons. Here, Locke understands commons as a *res nullius* which belonged to everyone and no one. By conceptualizing the commons as a *res nullius* in a state of nature, the individual appropriation of communal resources through one’s labor was legitimized. In a second step, money was invented as an answer to the problems of barter and introduced through “tacit consent”, which then led to the spread of markets. Despite the increasing scarcity of access to natural resources for many people, the increase in productivity has led to an overwhelming abundance that can, in turn, be accessed with money derived from wage-labor relationships. This is the prevalent narrative that supposedly explains and legitimizes our contemporary market-based social arrangements.

In contrast to this somewhat mythical tale, a more historical account of the development of open and competitive markets in Western societies tells us a slightly different story. We have already discussed this historical process in our critical discussion of Locke, so there is no need to repeat it here in detail. As I have mentioned previously, this historical development is most famously described by Karl Marx as “the so-called primitive accumulation” and by Karl Polanyi, more generally, as the enclosure of commons which has been occurring at least since the 12<sup>th</sup> century in England, and later on the Continent and in European colonies (Marx 1982a, 871-940, Polanyi 2001, Neeson 1996, Linebaugh 2008). Here, peasants were violently dispossessed of their rights to use commons which were primarily fields and forests. Marx argues that, although this process freed numerous people from feudal bonds, it also separated them from their means of subsistence. Polanyi, in turn, described this development as a process in which land, labor and money were dis-embedded from their regulated webs of interdependent social and ecological relationships and transformed into commodities, ultimately re-embedding them in “abstract, competitive and non-democratic global market relationships” (Tully 2013b, 227). While this enclosure movement is sometimes understood as the “dirty prehistory” of capitalism (G.A. Cohen 1995, 121), other scholars argue that this dispossession is an ongoing process that enables the creation of profits and the accumulation thereof. More contemporary forms of enclosure occur, for instance, through land grabbing, gentrification, patents on genes, seeds and medical knowledge and the privatization of water, scientific research and public services. The general point being made in this literature is that the vast amount of wealth that is accumulated by certain people is not simply due to labor, but more precisely gained through perpetual, systematic and sometimes violent enclosure, privatization and commodification of common resources. According to this narrative, and as has already been discussed, the answer to this problem then lies in “reclaiming the commons” and the “decommodification” of our resources and relationships by organizing the reproduction of life without a dependency on market relationships.

What this commons-oriented narrative somewhat neglects, however, is the question of the role of markets in both pre-capitalist societies and a future commons-creating society. Let us therefore analyze this historical development not from a commons but, rather, from a market perspective. Generally, the creation of an abstract, competitive market was not only possible due to the enclosure of commons, but also through the

opening up of highly regulated local markets. I would agree with Karl Polanyi and Fernand Braudel that, although most of human history was based on subsistence and gift economies, exchange, trade and certain types of local markets are not necessarily a new phenomenon (Polanyi 2001, 66, Polanyi et al. 1957, 257-70, Braudel 1986, 32-5, 41). Nevertheless, we should not equate all forms of money and markets with an open and competitive market economy that is structured according to a self-regulating “supply-demand-price mechanism” (Polanyi 1977, 124). As both authors demonstrate, local markets simply bring production and consumption together and enable the acquisition of “goods that are not available on the spot” (Polanyi et al. 1957, 257, Braudel 1986, 42). To be more precise, the local market is a place that enables people to exchange goods that they do not produce themselves either through barter or with money. For most of human history, the exchange of goods was socially embedded and highly regulated by customs and social institutions.

One such example of an exchange-based market is the guild system that developed during the process of urbanization in western Europe between 900 and 1300 CE (Schulz 2010). In her highly insightful article “The Silent Revolution: A New Perspective on the Emergence of Commons, Guilds, and Other Forms of Corporate Collective Action in Western Europe” (2008), Tine De Moore argues that the development of guilds and commons in the Netherlands demonstrates similar institutional forms of regulation of common resources through collective action. De Moore understands commons as highly regulated natural and agricultural resources (i.e. common-pool resources) such as water, pastures and forests. In contrast, craft guilds are urban institutions that regulate common resources such as labor, skills, technology, prices, information and, ultimately, the market itself. With reference to Dutch historians Lourens and Lucassen, she generally defines craft guilds as

“organizations that – with the agreement of the local authority – unite members of the same occupational group, with as their most important goal the furthering of their economic interests, but not without taking into account the general well-being of their group as well” (Lourens and Lucassen in De Moor 2008, 187).

Although she admits that it is difficult to prove whether guilds always fulfilled this function, the principles of guilds nevertheless fit into our understanding of relational and interdependent freedom in which the thriving of the individual depends on the

flourishing of the community – and vice versa. According to De Moore, despite the differences in resources, the goals and regulative mechanisms of guilds were rather similar to those of commons:

“To make their collective projects work, guilds and commons relied heavily for enforcement mechanisms on group norms, as opposed to formal legal enactments. They designed most of the rules themselves, with or without the involvement of the local powers [...]. With a large set of rules, commoners and guild members tried to regulate the behaviour of their fellows – to prevent them from free riding – and to control the effect their surroundings could have on the behaviour of the members. They developed a system of market regulation in order to protect their ‘own little world’. Measures were taken by both guilds and commons to achieve a reasonable income for their members and to eliminate the disruptive effects of the market, which was still at an early stage of development when commons and guilds were set up in Europe. Institutions such as guilds could make functioning within those settings less risky, though without losing too many of the advantages the market offered” (De Moor 2008, 197).

These similarities between guilds and commons are noteworthy because they provide us with a historical example of social organization that utilized the market for the exchange of goods in order to satisfy basic needs. Here, the market was not regulated “from without” by the state, but rather by the producers themselves to protect them from the negative dynamics of free-riding and competition such as poaching, hoarding and price and income instability. Simultaneously, the collective action aimed at generating positive effects through pooling resources in order to share risks and create advantages of scale (De Moor 2008, 202-5).

If we understand a commons, in the general sense, as a resource system that is democratically self-governed by those largely affected by it, we could also define medieval guilds as a type of labor commons.<sup>96</sup> Parallel to fisheries in which the individual fishermen own their own boats and equipment, the craftspeople in the guilds also own their own workshops, yet share and regulate the specific knowledge, technologies and skills of a specific craft. Although this skilled labor is used to produce things that are sold on the market, it could nevertheless be argued that a guild limits the commodification of labor power through its self-defined rules and regulations.

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<sup>96</sup> For a more recent example of labor commons, see Dario Azzellini’s analysis of worker-recuperated companies in Latin America and Europe (Azzellini 2016).

Aside from the regulation of labor within the market, however, we could also understand pre-capitalist markets themselves as second-order commons institutions. In contrast to the concept of a labor commons, the notion of a market commons appears to be – at least at first glance – inherently contradictory. The reason for this seeming paradox lies in our contemporary and rather narrow interpretation of markets as institutions structured according to competition, commodities and profits while commons are based on cooperation, concrete goods and use-values. Furthermore, a market is often understood as institutionally open (North et al. 2009), while the goods that are exchanged must be private and closed (Demsetz 1967). According to some, an open-access market can also be interpreted as a commons (Carroll et al. 1979) or, more precisely, as a Hardinian unregulated and open-access commons. Although the members of guilds do produce private goods that are exchanged on the market, the pre-capitalist market itself is more or less closed. Sellers and prices were generally defined in advance by the guilds to protect producers from competition and the “tragedy of the market”. In this sense, the market of the guilds created through their self-defined rules and regulations was a type of “embedded market” (Polanyi) or “moral economy” (Thompson 2010) that was organized according to the satisfaction of needs instead of a self-regulating price mechanism and profit maximization. In this sense and depending on its institutional framework, I would argue that a market could theoretically be defined as a democratically self-regulated commons. Yet, despite this similarity, I would argue that medieval markets regulated by guilds should *not* be understood as commons because they did not include a large group of people who were greatly affected by this resource system through the institutional regulation of it: the consumers. This was the reason for Adam Smith’s critique of guilds; they did not act in favor of consumers. Yet, while Smith advocated the deregulation of markets in the name of lower prices for customers, I would argue in favor of the integration of consumers in the democratic regulation of markets. We shall return to this problem later, but first, we must understand how the highly regulated medieval markets were transformed into open-access, capitalist markets.

With historian Fernand Braudel, I would argue that, parallel to the enclosure movements, which privatized common pool resources, the rather closed medieval markets were gradually opened since the 15<sup>th</sup> century in Europe. This transformation occurred, most importantly, through private or “counter-markets” for foreign goods,

which existed outside of local medieval markets. Here, individual traders became middlemen between producers and consumers outside of the traditional and collectively regulated circuits of exchange. Both the access to mobile capital and the superior knowledge of both ends of the exchange relationship gave the merchant an unequal quasi-monopoly position in trade and enabled him to generate and accumulate large profits (Braudel 1986, 50-53). This “privatization” of local markets was in turn supported by state colonialism and its foreign trade relationships. Furthermore, both Braudel and Polanyi show that the mercantilist nation state also opened local markets, ultimately creating a protected yet internally open domestic market (ibid, 88, 97, Polanyi 2001. 63-70). Due to the growing critique of this state intervention in economic matters by people such as Adam Smith, the state slowly withdrew and loosened its protectionist measures, gradually and carefully transforming the internal open market into a more open international market regime (Chang 2002, Shaikh 2007). Over time, the socially embedded and collectively regulated local markets of the guild economy were transformed into one open, “common” capitalist market.

With this very simple sketch of the development of markets in recent human history, I hope to have demonstrated that we must speak of markets in a differentiated manner. Furthermore, I hope that I have shown that markets often were and, thus, can be collectively regulated in order to serve social needs and desires. The importance of this short excursion in the history of markets for my argument is that we can, or rather should, integrate these insights into our understanding of a possible commons-creating society. Therefore, now let us turn to the concept of a market commons that I will develop in the following section.

## **8.3. The Market as a Common**

### **8.3.1. Ecological Foundations of a Market Commons**

By defining the market as a common, economic activities are primarily to be understood within an ecological framework. The economy is not only understood as a subsystem of society, but also as a subsystem of the even larger and more encompassing ecosystem. This notion is best portrayed with Kate Raworth’s rather recent idea of “doughnut economics” (2017) in which she illustrates the economy in the following manner:

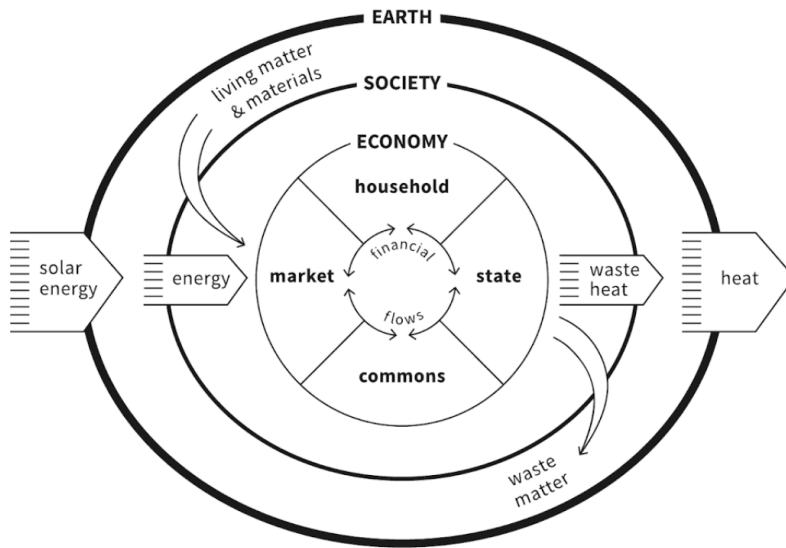


Figure 3: Kate Raworth's Diagramm of the embedded economy (Raworth 2017, 62)

While I would agree with her general depiction of an embedded economy, I have argued here that a democratic and ecologically sustainable society should expand its commons both in the sphere of the state and the sphere of the market. Nevertheless, a strength of this model is that it embeds economics within society and society, in turn, within the larger and limited ecosystem. Here, the dynamic reproduction of systems is understood as the metabolic flow of matter and energy within and between systems.

More fundamentally, because matter and energy are limited on planet earth, economic activities are then generally understood as a zero-sum game: The gains of some people are losses for others. The question that results from this problem is how to minimize the losses and create a relative abundance despite absolute limitations of existing resources. In a capitalist market, this implies that we understand relationships in both material and symbolic (monetary) relationships in which the accumulation of wealth should be understood as the monetary accumulation of “good” matter and energy in the hands of a few and the widespread distribution of “bad” matter and energy in the form of pollution and ecological degradation. Here, profits are understood as the extraction, privatization and accumulation of previously non-commodified goods such as individual labor power (including physical strength and creativity), genomes, water, land or fossil fuels. On a symbolic level, this implies the unequal distribution of access to resources (matter and energy) through one's purchasing power. One form of such an unequal distribution of



symbolic wealth is found in the large asymmetries between creditors and debtors. Similarly, profits earned through speculation could be understood as gains that increase the costs of goods (i.e. food) and, in turn, decrease the access to this resource for numerous other people. The accumulation that results from speculation would thus be interpreted as a form of extraction from other people's purchasing power and access to a certain good or resource.

In this ecological understanding of economy, we could understand the flow of resources with the metaphor of an irrigation system. This irrigation system can either be democratically organized according to the needs of individual users and therefore be very finely tuned in distributing water to all regions of an ecosystem. Or, conversely, it can be organized according to supply and demand, purchasing power and the Matthew Principle in which the irrigation system is modeled with increasingly large levees and dams that contain and accumulate the water for the use of only a few. Using such a metaphor, migration can, for example, be understood as people simply following the metabolic flow of "good" matter and energy on the planet earth. These people are coming to drink from the dam of accumulated matter and energy. With such an ecological perspective, we must abandon the belief that economic growth will solve socio-ecological problems, because, as we have seen, accumulation and its highly unequal distribution of wealth inherently increases these conflicts. In the face of these serious problems, the concept of market commons provides us with an understanding of markets that attempts to take these ecological limits into account by democratically negotiating its institutional framework and the coordination of its basic activities. Thus, the aim of the democratic market commons is to transform absolute scarcity into a relative abundance through the mechanisms of cooperation, sufficiency and conviviality.

The general point of such a market commons, however, is not merely democratic inclusion, but the reconceptualization of the market itself as an institution that must fulfill basic needs such as the provision of decent, respectable and, ideally, meaningful and fulfilling jobs and the access to essential goods and services – within certain planetary boundaries. This is what one group of scholars has coined the "foundational economy" (Bentham et al. 2013), which is "that part of the economy that creates and distributes goods and services consumed by all (regardless of income and status) because they support everyday life" (ibid., 7). Therefore, by conceptualizing the market

as a common, the market's primary function is not to endlessly increase wealth, but simply to satisfy essential needs by bringing people who need things together with people who produce things. This is the basic function of markets that is, at least in theory, originally intended to be brought about by open and free markets. Free markets are supposed to fulfill this function better than other markets and better than other institutions such as the state or the community. Yet, in contrast to the intellectuals who believe that this can only occur when the market is self-regulating, I would argue instead that it requires the support of democratic governance mechanisms to perpetually adapt the institutional framework to changing social needs and socio-ecological conditions. Furthermore, a focus on market commons transforms the overarching and often abstract rules and regulations of an open competitive market into decentralized socio-ecological niches in which the default rules of the institutional framework foster cooperation, fairness and the sustainable reproduction of socio-ecological systems. We could call this a type of "democratic experimentalism" (Dorf and Sabel 1998) in ecological economics.

Within the context of open and competitive markets, such strategies are often pejoratively called protectionist. In this critique, protectionism is conceived as a situation in which one party protects its gains while harming others. In contrast, because the market commons landscape is understood as diverse and contextually interdependent, the rules of a specific market will always attempt to protect the sustainable reproduction of its resource system within its interdependent relationships to other socio-ecological overarching systems. The precise aim of the endeavor is to protect sustainable and (re)generative forms of economic activity that enable the thriving of its members without harming other living beings elsewhere. Lastly, I would argue that a market commons would shift our focus, whenever possible, from global commodity chains to local or regional economic cycles. The re-localization of economic activities and market interactions could not only have a positive ecological effect due to shorter transportation routes, but could also provide affected people with greater incentives and possibilities to democratically govern the institutional framework of their market commons. Similar to democracy in the political sphere, the more local it is, the shorter the chains of accountability are, the greater the trust, and the more effective mutual monitoring and sanctioning can be.

Nevertheless, a market commons must not solely focus on the local or regional, but should enable people throughout the world to co-determine and adapt their economic institutional frameworks through network forms of governance in order to fulfill their similar yet conflicting needs. That being said, it is of great importance to emphasize that an economy of market commons requires a larger, overarching political framework that fosters the decentralization of ecological economic activities. But as we have already discussed in relation to the commons provision of basic goods and services such as housing and healthcare, a market commons cannot simply be implemented top-down from a single center of authority, but must be demanded and jointly developed by people in their diverse socio-ecological habitats.

### **8.3.3. Market Commons and Corporatist-Associative Democracy**

In order to better understand this idea of a market commons and its democratic-economic governance, I will now compare it to the idea of corporatist and associative democracy as presented by Streeck and Schmitter (1985) and Paul Hirst (1996).<sup>97</sup> Similarly to these theories, the notion of a market commons must be understood as a critique of the strict separation of the “private” and economic from the “public” political and political sphere. Here, economic activities are not understood as strictly private, but rather as “public” or as common affairs that affect a large range of people. Yet, in contrast to top-down state regulation, people can negotiate and coordinate their economic activities themselves through associations. Similarly to my notion of democratic governance in a market commons, Paul Hirst describes the inclusive character of such associative governance bodies in the following manner:

“Associationalism tries to view the economy from the standpoint of the interests of a wide range of economic agents including those who are economically inactive as well as the active, the consumer and the producer, the worker and the manager – and does so in terms of a wide range of substantive goals. It is democratic in that it seeks to incorporate the widest possible range of actors as full participants in economic governance, and not just as the objects of decision-making and management” (Hirst 1996, 97).

A key aspect of this inclusion is not only the inclusion of the largely affected, but rather the negotiation over matters in which people exist in interdependent relationships. By

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<sup>97</sup> For other notions of associative democracy see also Cohen and Rogers (1995) and Archon Fung (2003b).

bringing people with apparently antagonistic interests together (i.e. cheap products for consumers, jobs for workers, profits for managers, livable neighborhoods for families etc.), it is assumed that negotiated answers can be found that satisfy different and conflicting needs. Philippe Schmitter and Wolfgang Streeck discuss these relationships and functions in the comparison of a local community, the market and the state to corporatist-associative organizations:

“In a first approximation, this logic can be characterized as follows. In a community order, actor preferences and choices are interdependent, based on shared norms and jointly produced satisfaction. In a market order, the actions of competitors are supposed to be independent since no one singular action can have a determinant and predictable impact upon the eventual allocation of satisfactions. In a state order, the actors are dependent upon hierarchical co-ordination which makes their choices heteronomously determined and asymmetrically predictable according to the structure of legitimate authority and coercive capability. In a corporative-associative order, actors are *contingently or strategically interdependent* in the sense that actions of organized collectivities can have a predictable and determinant effect (positive or negative) on the satisfaction of other collectivities' interests, and this induces them to search for relatively stable pacts. [...] Basically what seems to happen is a shift in the 'rationality' of social choice. In communities, the calculus rests on 'satisfying identity', in markets, economic or political, on 'maximizing advantage'/building 'minimum winning coalitions', in states on 'minimizing risk' and 'maximizing predictability'. What associations in a corporative order strive for is something more prosaic, but quite rational given the structural complexity and informational overload of modern society, namely '*satisficing interests*'. By deliberate mutual adjustment and repeated interaction, these comprehensive, monopolistically privileged actors avoid the temptation to exploit momentary advantages to the maximum, and the pitfall of landing in the worst possible situation. In short, *they avoid the prisoner's dilemma* through inter-organizational trust backed by what we shall call [...] 'private interest government'” (Streeck and Schmitter 1985, 125-7; emphasis added).

As we can see, such corporatist-associative organizations are created due to the contingent interdependence of affected people and parties. This would overlap with what we have otherwise called the networked community that shares a contingent reality. Furthermore, with the aid of a “private-interest government”, which we have otherwise called a background partner state, problems of freeriding and exploitation can, at least theoretically, be mitigated. For these reasons, Waheed Hussain argues that such a corporatist system is the “most just stable regime” and should be integrated in a Rawlsian theory of justice in order to stabilize and democratize the competitive market (Hussain 2009).

Just as important, I would argue with Axel Honneth that such an arena of deliberation in economic associations would bring forth a “discursive flexibilization of seemingly objective [economic; LP] constraints” (Honneth 2014, 193). Through this democratic deliberation and negotiation, non-monetary values can be integrated in the evaluation and organization of economic activities and goods (Anderson 1993). Economist Diane Elson understands this as the socialization of the market. As she explains in her more demanding model of a democratic market,

“the social relations between buyers and sellers must be changed so that they are *not* antagonistic; the price formation process must be a public process, not one controlled by enterprises; and information must be shared, with the nexus of trust, reciprocity and goodwill setting the limits within which the market operates, rather than being subordinate to the market” (Elson 1988, 27; emphasis i.o.).

Here, the aim is to transform the private processes of price formation through the “invisible handshakes” of exclusive gentlemen’s clubs and corporate networks into public bodies (ibid.). Elson calls these public bodies Price and Wage Commissions which should bring fragments of information in the market together and make the creation of prices transparent. The collection of and debate over information should not, however, be limited to prices, but must include other information about non-monetary, conflicting values, for example in relation to the quality of living and respect of the more-than-human world. Succinctly, the three functions of such a commission would be “facilitation of information exchange; enforcement of information disclosure; and an interactive role, in this case in the design and specification of goods and production” (Elson 1988: 34). Importantly, such a commission would enable people to co-determine which goods are produced, how they are produced and how they shall be accessed. Accordingly, a shift occurs from individualistic and contractual *ex post* to collective and democratic *ex ante* decision-making. The shift, however, does not lead to a negation of individual *ex post* price-oriented decision-making, but merely complements and democratically embeds it. This process can therefore be understood as a re-embedding and partial de-commodification of economic goods and activities. More generally, the associative democratic governance of economic activities can thus mitigate the coercive

mechanisms of open markets that are merely structured according to competing prices and geared towards perpetual growth.

To a certain extent, we could argue that corporatist-associative governance mechanisms transform the open, competitive and *liberal* market into what Peter Hall and David Soskice have named a *coordinated* market economy in their theory on the “varieties of capitalism” (Hall and Soskice 2004). However, there are a few important differences between the notion of a coordinated market economy and a market commons. Firstly, the coordination that occurs in coordinated markets focuses on labor and the governance thereof, whether through collective wage bargaining or the maintenance of vocational education and training (VET), which we will discuss in more detail shortly. In contrast, a market commons would not only deal with labor and skills but would aim to democratically coordinate all economic activities and goods. Second, although such economies are somewhat coordinated, they are still structured according to the principles of competition and perpetual growth – although possibly less so than liberal markets. A market commons therefore attempts to replace the competitive core of coordinated market economies with democratic cooperation. This does obviously not connote that all economic competition will be transformed into cooperation, but rather that the forms and extent of competition will be democratically negotiated over and institutionally regulated. Third, although the notion of a market commons builds on the model of corporatist regulation of a coordinated market, it pushes the notion of participation much further and bases the concept on more social and ecological grounds. It is an attempt to transform the stale backdoor politics of corporatism into more dynamic open-door politics of collaborative network governance. This is what Paul Hirst has attempted to do with his idea of associative democracy. Put somewhat crudely, the meeting room in a skyscraper filled with older white men in suits should be replaced by a more accessible meeting place close to home and, more importantly, a more diverse crowd. In this sense, my notion of a market commons is much more akin to Paul Hirst’s concept of associative democracy than Streeck’s and Schmitter’s corporatist-associative model.

To elucidate this concept of a market commons in contrast to corporatism a little more, I refer to a more concrete example that is often consulted in this context: Skill formation and the labor market. Skill formation or, more precisely, vocational education and

training has a long history in German-speaking countries and Northern Europe and has its roots in the previously mentioned guild system. Both the apprenticeship systems of guilds and those of VET were developed to reproduce high quality skills through socially regulated corporatist institutions. While these institutions and regulations were largely defined by craftspeople in guilds, the VET system is based on corporatist intermediary institutions between the market and the state that bring people with conflicting interests together, including those of competing firms, employees and municipalities.

Historically, corporatist institutions for the collective management of skill formation were developed as an answer to the problem of economic liberalization after the ban of guilds.<sup>98</sup> The ban of guilds led to the problem of skill degradation and employee poaching (Ritter 2014). Due to competition with large factories, smaller producers wanted to increase the specialization of their workers to make them more efficient and thus to provide products on the market for lower prices. Furthermore, if more energy were invested in a worker to develop diverse skills in a specific field, there would also be the risk that this worker would then be stolen or “poached” by competing firms who did not invest in their worker’s skill formation. Regarded within the framework of the tragedy of unregulated open-access market commons, we could therefore say that skill degradation was a result of the over-use of labor power through specialization and employee poaching as a form of free riding. As an answer to these problems, the development of the collective management of skill formation was an attempt to defend and upgrade the quality of craftsmanship in workshops and manufactories against the threats of the tragedy of the competitive market.

For these reasons, affected actors including small businesses, wage-laborers and certain politicians attempted to solve these problems through collective action. Here, the conflicting needs of firms and workers (e.g. the balance between time on the job and time for general education in school) are expressed in bodies that possess the legal authority to define, implement and regulate the education of workers. This does not only occur in semi-public vocational schools, but also in private “training associations” (*Ausbildungsverbünde*) in which numerous firms have pooled their resources to provide more professional institutional support for their apprentices (Leemann and Imdorf

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<sup>98</sup> The literature that I refer to here is based on the example of Switzerland, but I will assume from this point onwards that the mechanisms and historical development of VET systems out of the guild system are somewhat similar in other European countries.



2015). More generally, the “supply” of skills is coordinated with the demand of skills in a decentralized and democratic manner – with the support of the state, yet without annulling the labor market and price mechanisms. Through the inclusion of municipalities and the state into the governance bodies of skill formation, it can generally be said that economic planning has also become more democratic and more accountable to the wider public.

The importance of the VET system for our discussion of market commons should be fairly obvious. First, it provides us with a very concrete understanding of how market regulation can occur where an economic good (skills and labor power) is produced and organized in a decentralized and democratic manner. Second, the historical development of the VET system – at least in Switzerland – also shows that it was not simply implemented by the state, but was developed in a strenuous process of confrontation, negotiation and deliberation between diverse parties with diverging interests. In this sense, VET is a superb example that is rather widely acclaimed of a well-functioning democratic regulation and coordination of economic goods and activities.

However, despite the similarities, I would argue that the contemporary VET systems in many countries would have to increase their democratic potential to become part of a market commons. First, this would involve the inclusion of those most affected by its policies: The apprentices themselves. Second, the discourse of the VET system often revolves around the question of the needs of “the economy”. Here, it is implicitly assumed that if the needs of businesses are satisfied (competitiveness, efficiency, productivity, profit maximization etc.), people will have jobs and society will prosper. I would contend, however, that although people do appreciate having a job, the interests of private businesses are not equal to those of society in general or to those of ecosystems. For this reason, I would emphasize the importance of the integration of other civil society associations in the democratic governance of VET systems. The question a VET system must then deal with is not merely one of how to satisfy the needs of businesses, but also of how to develop the capabilities and skills of the wider population to provide everyone with sustainable livelihoods. This would, however, go beyond merely “greening skills” (Evans and Stroud 2016) and would integrate more complex social skills that are founded on more democratic and ecological principles of

interdependent thriving. This is not to say that these efforts and tendencies do not already exist, but simply that a VET system would need to be developed in this manner to reproduce the necessary institutional framework and practical skills for a market commons.

#### **8.3.4. Social and Solidarity Economy as a Market Commons**

To develop my notion of a market commons further, I would like to turn to another example of what a market commons could look like: the social and solidarity economy. The social and solidarity economy (SSE) is generally understood as organizations and companies that pursue economic goals that are based on social and ecological values. Concrete examples of the social and solidarity economy include organic farming and fair trade networks, community economic development organizations and socio-ecological investment funds as found in the Social Economy of Quebec (Reed 2010, Parvathi and Waibel 2013, Wilson 2013, Raynolds et al. 2007, McCall 2003, Simon 2001, Neamtam 2005, Mendell and Neamtam 2008). The United Nations Inter-Agency Task Force on Social and Solidarity Economy defines SSE in the following manner:

“SSE refers to the production of goods and services by a broad range of organizations and enterprises that have explicit social and often environmental objectives. They are guided by principles and practices of cooperation, solidarity, ethics and democratic self-management. SSE includes cooperatives and other forms of social enterprise, self-help groups, community-based organizations, associations of informal economy workers, service-provisioning NGOs, solidarity finance schemes, among others” (UN 2014, iv).

Despite the general goals of integrating social and ecological values into economic activities, due to its emphasis on democratic participation, the goals can be realized in a plurality of forms that are best fitting to people’s diverse needs and conditions. A social and solidarity economy is therefore not a negation of the market but a transformation of the relationships that constitute it. It aims to replace narrow self-interest with negotiated cooperation, reciprocity and mutual interests (Exner and Kratzwald 2012, 38, Nyssens and Petrella 2015, 184).

Importantly, a social and solidarity economy is therefore quite different from liberal or market socialism in which individual firms are owned by the workers and democratically run (Pateman 1970, Dahl 1985, Miller 1990). Democratic self-

management of firms is an important aspect of the democratization of economic activities and institutions because it overcomes the antagonism between labor and capital. Nevertheless, it leaves the antagonistic and conflicting interests between other isolated economic agents (e.g. producers vs. consumers and producers vs. producers) intact. Simply put, this democratic self-management leaves the isolation paradox at the heart of the open and competitive market untouched, which, in turn, brings about the tragedy of the unregulated market. In contrast, social and solidarity economy attempts to deal with this problem of competitive markets by fostering cooperation between conflicting economic agents. In this sense, the previously mentioned mutual interests are not a result of a homogenous and harmonious group but rather come about by bringing different individuals and groups with diverging interests together and enabling them to discuss and deal with their problems collectively. As Marthe Nyssens and Francesca Petrella explain in their article “The social and solidarity economy and Ostrom’s approach to common pool resources” (2015), diverse stakeholders are part of the organs of governance: “the direct beneficiaries of the activity, the employees, the volunteers, the public authorities, donors or the local community” (Nyssens and Petrella 2015, 181). In contrast to the competitive market that suppresses conflict and transforms it into competition, social and solidarity economy and market commons bring conflict to the fore and attempt to solve problems through deliberation, negotiation and cooperation.

Furthermore, this more inclusive democratic network of stakeholders also has implications for the property arrangements that differ between capitalist and democratic firms: “[T]he property regimes of the SSE [...] also deviate from the principle of joint possession of the right to residual control and residual earnings” (ibid.). Concretely, in an SSE association, the “investors are not the owners of the organizations” (ibid.). This reminds us of our discussion of common property arrangements that are not based on ownership but rather on stewardship and guardianship towards the wider community and the environment. Here, the diverse members of the association collectively co-determine the reinvestment and distribution of the residual earnings. The democratic control and co-determination of reinvestment is chosen via the individual rights of owners and investors to a share of the collective enterprise’s profits. In this sense, an SSE is not per se against profits. As the UN Task Force explains in this wider frame of reference,

“Rather than assuming that the benefits of growth will ‘trickle down’, or rely on safety nets to protect the vulnerable and on technological fixes to protect the environment, SSE seeks proactively to mobilize and redistribute resources and surplus in inclusive ways that cater to people’s essential needs. Furthermore, SSE promotes environmental protection and the economic and political empowerment of the disadvantaged and others concerned with social and environmental justice. While profitability is a feature of many types of SSE enterprise, profits tend to be reinvested locally and for social purposes. [...] SSE is an economic approach that favours decentralization and local development and is driven by ethical values such as solidarity, fair trade, voluntary simplicity and *Buen Vivir*. It is holistic in the sense that SSE organizations, enterprises and networks simultaneously pursue some combination of economic, social, environmental and emancipatory objectives” (UN 2014, ix).

In a social and solidarity economy, profits are thus not pursued for the sake of profits, but rather to improve the concrete living conditions of a wider community and to enable them to lead a co-determined good life. Additionally, the broad inclusion of diverse civil society associations in democratic governance makes it possible to include ecological aspects in their calculations, thereby attempting to align economic and ecological demands.

As we see, many of the values and goals of the SSE overlap with those of a commons-based economy, including social and ecological justice, democratic self-governance, economic decentralization and sufficiency. The SSE attempts to bring economic activities in line with principles of social development and ecological thriving. Furthermore, the property arrangements underlying social and solidarity economy resemble the principle of guardianship in commons. However, if a social and solidarity economy appears to uphold and exemplify the underlying values of a commons in market arrangements, why utilize the term of market commons at all and not simply stick with SSE? Despite the similarities and strengths of the social and solidarity economy, I would nevertheless advocate the use of the term market commons. The main reason for this is that although the SSE attempts to change relationships from “within” the market, it appears to lack the theoretical framework to more fundamentally transform and democratize the entire market. Simply put, it seems to remain – both in theory and practice – as a niche within open and competitive markets. In order to change the broader institutional framework of open and competitive markets, I would therefore argue that it is necessary to conceptualize the market itself as a commons. And most importantly, by defining the

market itself as a common implies that people have the right to reclaim and co-determine its institutional framework in order to satisfy their needs and maintain their livelihoods within the ecological systems that they inhabit.

#### **8.3.4. Market Commons and Community-Supported Modes of Production**

Finally, I would like to discuss one last example of such a market commons that goes beyond previous examples of corporatist coordination and social and solidarity economy: Community-supported agriculture (CSA). Here, in contrast to the previous two models, I will argue that community-supported modes of production demonstrate how supply and demand can be democratically coordinated through a subscription system, ultimately enabling people to re-localize economic activities.

Community-supported agriculture is a concrete answer to the problems of farming in an open and competitive market. Without going into detail, it can generally be said that the open and competitive market is highly problematic for farming and agriculture. The reason for this is the mechanism inherent in the tragedy of the open and competitive market that I have previously discussed.<sup>99</sup> One commons-based answer to this wide-scale tragedy is community-supported agriculture (CSA) which has been developed since the 1970s in Japan, Switzerland, North America and, more recently, in other countries (Dyttrich and Hösli 2015, Monson 2017, Krul and Ho 2017, Balázsa et al. 2013). Simply put, CSA organizations enable producers and consumers to come together and democratically negotiate over and collectively organize their production and distribution of food. The main feature of this system is actively co-creating a decentralized and democratic “food commons” (Vivero Pol 2013) in which people take

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<sup>99</sup> Here, farmers compete against each other to produce cheaper food for customers. As in other markets, one can find antagonistic relationships between both individual producers among themselves and between producers and consumers. This antagonism leads to a “race to the bottom” in which farmers are forced to produce more and more output for less and less money. This is euphemistically called “efficiency gains” and “structural adjustments” in agriculture. The effects are often, however, rather problematic, such as the exploitation of humans and animals, the use of poisonous pesticides, pollution, the overuse of and even the creation of unemployment, hunger and migration for those who cannot compete with larger and more industrialized farms – and obesity for those consuming the goods. Other problems in agriculture that arise from a profit maximization imperative include, for example, land grabbing, the deforestation of rainforests for large soy or palm-tree monocultures, the privatization of seeds and the increasing concentration of power of a few large multinational agribusinesses (Friedmann 1993, Shiva 2002, 2005, 2009, Otero 2008, Bello 2009, Lang and Heasman 2009, McMichael 2009, Maurin 2011, Duflot 2011, Ziegler 2011, Ziegler et al. 2011, Sekinger et al. 2014, MultiWatch et al. 2016, Torrado 2016). From this perspective, a food regime based on the open and competitive market results in socio-ecological devastation and relationships of dependency and domination.

(back) control over their local food systems. Although models of CSAs differ largely, most CSAs require that consumers become members of the specific food cooperative and subscribe to a weekly ration of food that can either be individually determined or that is put together according to what is momentarily ripe and available on the farm. From an ecological perspective, this system is attractive because it creates short distances between producers and consumers which minimizes transport routes and greenhouse gas emissions. Furthermore, all the edible goods are passed on to consumers, which reduces food waste that occurs when goods are not accepted by retailers due to their imperfect appearance or are simply not bought by customers at the market or in grocery stores. Lastly, CSA farms typically produce organically (Monson 2017, 83).

Aside from the ecological aspects, the financing scheme of community-supported agriculture is highly interesting because it solves many problems that result from normal market arrangements. The subscription system provides producers with definite consumers for an entire season or year or a type of “guaranteed market” (Monson 2017, 85). This implies that the costs for the enterprise are paid for in advance and that the risks are shared among all the members of the organization: “If part of the crop fails, then the consumer receives a smaller share” (ibid.). The commitment of consumers to their subscription also frees farmers from uncertain sales, volatile market prices and powerful middlemen. More generally, a subscription system enables farmers to decrease expenses (e.g. in marketing, packaging and delivery), secures their income and frees them from the necessity to grow in order to survive on a competitive market. This not only allows the money to flow directly to the producers but also allows them, if possible and necessary, to create new jobs for others.

In community-supported agriculture, the price of a subscription is democratically determined and primarily aims to provide producers with living wages that are often higher than normal market wages. Because intermediate buyers are bypassed, products can be less expensive than products of equal quality sold in stores. Nevertheless, due to the smaller scales of production, this is not always possible. One interesting answer to this problem is the notion of “offer rounds” that is, for example, practiced in some CSA projects in Germany. At the yearly general assembly of the organization, each member of the cooperative contributes however much he or she can give. If the necessary amount

of money for the yearly production process is not attained, another round of “gift-giving” is required (Siefkes et al. 2016). Interestingly, according to classical economic theory, this would inherently lead to free-riding, but practice has shown that it not only works, but it is also a method to practice concrete cooperative solidarity between members with different purchasing power. Another means to deal with cheaper food prices on the competitive market is the “unpaid” participation of members in the production process. From a commons perspective, we could understand this as a form of commons-based peer production. This not only sinks costs, but also provides the participants with enriching experiences of community and nature. This active participation enables goods and production processes to be valued differently, creating a “non-monetary profit” (Bloemmen et al. 2015, 113) that results from an increase in knowledge and skills, new friendships and social networks, the connection to a place and landscape and a sense of meaning, efficacy and responsibility (Cone and Myhre 2000). For farmers, this can also include an increase in recognition for their work and appreciation of their products. In general terms, this democratic and non-monetary form of accounting aims to replace quantitative forms of value with more qualitative notions that are based on the “enjoyment of life” (Bloemmen et al. 2015, 113).

The fields in which the model of community-supported agriculture could also be applied are basically endless: A bakery, the production of pasta, clothes and shoes or even a restaurant in which one subscribes for lunch or a dinner once a week. But can these projects still be considered *market* commons, or have they not simply overcome fundamental market mechanisms such as the price mechanism itself and become commons associations? The question is difficult to answer because such community-supporting organizations dissolve the original market-commons dichotomy. Some features of the market remain, such as the opportunity to exit relationships, the existence of prices and the exchange of money for goods. Yet, at the same time, people do not buy their individual goods at the (super)market. Instead, they commit to a subscription that simply provides them with what is produced – similarly to a subscription to a newspaper or magazine. Yet, in contrast to these prevalent types of subscriptions, prices are not solely defined by producers and the market, but also by consumers. The contract understood as *quid pro quo* or exchange of equivalents is replaced by a type of social contract resulting from deliberation. Here, not merely prices, but also the technology, the institutional framework and the utilization of surplus value



are collectively determined. Maybe we could understand this as the democratic development of what is otherwise understood as bargaining between two parties on a farmer's market or in a bazaar. And in contrast to collective bargaining between trade unions and employers, the democratic negotiation of prices in these community-supported associations is not an attempt to shortchange the other party but, at least ideally, to solve problems that more or less suit the divergent needs and demands of different parties. In the case of offer rounds, the notion of market prices and costs are even more undermined in this way. Therefore, it is not exactly clear whether we can still consider such organizations to be markets. While money is still used in all these projects, the exchange of equivalents is somewhat dissolved and economic activities and goods are partially de-commodified. In the end, however, I believe that it might not actually matter if such organizations are still understood as market arrangements or not. The emphasis in all these projects should be laid on their commons aspect and on their ability to overcome the tragic, vicious circles brought about by open and competitive markets.

#### **8.4. Responses to Possible Critiques of the Market Commons**

After having discussed these different models of economic arrangements that provide us with insights of what a market commons may look like I would now like to turn to possible critiques of this concept in a final step. Some of the central problems of the democratic governance of economic activities that are often expressed are that the freedom of choice is reduced for consumers, that the diversity of products and the drive to innovate is annulled for producers and that not all goods and services can be planned in advance. Most importantly, it is criticized that democratic governance in economic affairs is inefficient. Other limitations are that people lack the time and interest for democratic participation and that such a model cannot be scaled up for a global world economy. I will shortly address each of these problems one at a time.

Let us begin with the problem of consumer choice. Here, it can be argued that a consumer loses the freedom to choose if production and distribution arrangements are organized through democratic forms of governance. Firstly, I would answer that consumer choice is not eradicated because people can still buy their goods in stores or order them in subscriptions. A market commons merely enables people to co-determine

the default settings and institutional framework of the market – and not to pre-determine what each person shall consume. Similarly, subscription systems are voluntary economic associations that not only provide different goods to choose from, but can also be exited. In this case, while the consumer does voluntarily give up some of their freedom to choose what they wish to buy every day, they are also freed from the necessity of shopping. More fundamentally, however, the most important point of democratic governance in economic affairs is precisely to overcome the problems that arise if all economic decisions were made on an individual basis. In the case of subscriptions, this implies that while the consumer might “lose” a part of his or her sovereignty, they would nevertheless receive access to a world of production that is otherwise closed off and gain the possibility to collectively co-determine the way in which the specific good is being produced and distributed.

On the producer’s side of the relationship, it is often argued that democratic governance in economic affairs undermines innovation and product diversity: Entrepreneurs and producers are limited in their creative potentialities. A main problem of this critique is the misconception of democracy. Democracy is sometimes misunderstood as the implementation of the will of the majority over the will of all: The collective dictates what the individual must do (Queralt 2018, 288-9). However, as we have already mentioned in our discussion of ecology, democracy should be understood as the negotiation of interests and the flourishing of each individual within overlapping socio-ecological systems. Within the framework of negative rights, this can be interpreted as the pursuit of individual interests as long as they do not harm other individuals. This individual negative freedom is the principle that also underlies the open and competitive market. Here, the freedom to innovate is always bound by the ability to sell one’s goods and, more importantly, to generate profits to survive on the market. In turn, innovation is perpetually required to maintain economic growth. In such a system, however, innovation is also limited to those with the skills and free capacity to innovate while others implement and realize these inventions. In contrast, the democratic governance in a market commons aims to mitigate the existential competition in economic activities to provide more space for innovation in goods and services that people need and desire – rather than those goods and services which merely generate the largest profits. In subscription schemes, the financial security provided by the commitment of consumers concretely provides producers with more free time and energy to develop new and

better goods which ultimately leads to a greater diversity in their products, as existing CSA projects demonstrate. Furthermore, in a market commons, the knowledge, skills and capabilities to innovate are, at least ideally, diffused among all the affected participants: These diverse members have the possibility to bring in new ideas of products or of how to optimize the organization and institutional framework of the existing economic activities. Collaborative peer-to-peer networks in a market commons thus provide fertile ground for an even broader dispersion of innovative potentialities than a competitive market economy.

In response to this, it is sometimes argued that democratic governance in economic activities is impossible because economic affairs are too complex and therefore cannot be planned (Hayek 2013, 34-52). Simply put, I believe the argument of complexity to be a theistic argument that aims to veil and immunize economic affairs from democratization. The problem of complexity has not stopped humans from flying to the moon, deciphering the genome – and developing the stock exchange. The question whether we *can* should not replace the normative imperative that we *should* democratize them. As previously argued, it is clear that the tragedy of the competitive market can only be overcome through the democratic governance of economic affairs. Here however, we must differentiate between democratic governance of institutional arrangements and democratic planning of economic activities. The democratic governance of the institutional framework of a market commons does not imply that all future activities are planned in advance, but rather that the institutional arrangement of the market is perpetually adapted to the changing conditions of the ecosystem and the needs and desires of the affected people. Prices can, for example, be democratically negotiated without determining in advance what each individual will consume. In more general terms, a market commons increases the *ex ante* democratic governance of economic affairs without negating the possibility of people “spontaneously” buying goods *ex post*. However, a market commons can also support democratic planning in the form of democratic network collaboration and coordination between producers and consumers. Here, everyday economic planning activities within a firm are simply extended to a wider community of agents. Both the democratic governance of the market common and the collaborative democratic planning of individual networks must be understood as decentralized and overlapping bodies that re-negotiate their interests when novel issues arise. Democratic governance and planning in a market commons

should not be interpreted as a top-down five-year plan developed and implemented by states and large corporations, but rather as an interactive and ongoing process of negotiation and coordination between diverse actors and on different levels.

But is such a democratic governance of economic affairs efficient? This is a classical critical question that implicitly assumes that all forms of allocation that are not based on the open and competitive market are inefficient. As we have already seen in our discussion of the justification of the open and competitive market, efficiency is one of the main sources of legitimation: Competition forces enterprises to produce more efficiently to survive on the market. This critique applies not only to the model of community-supported agriculture, but also to social and solidarity economy and to the concept of market commons in general. Despite this general assumption, our discussions of the problems of privatization and the market have demonstrated that an open and competitive market might be efficient in perpetually generating and concentrating monetary wealth in the hands of a few, but not necessarily efficient in maintaining sustainable livelihoods and ecosystems. Considering this fundamental inefficiency of open and competitive markets, our examples of democratic governance and active participation in production processes provide us with positive models of how to organize economic activities and the institution of the market in more efficient ways. A market commons is thus more efficient than a competitive market in two central ways. Firstly, widespread democratic economic governance is efficient because it enables people to express their needs and desires before the production process occurs, rather than after all the goods have been brought to and in hope that they will be sold on the market. Collaboration and coordination can increase the production of goods that people want and decrease the large number of goods that are not sold. Second, the democratic governance of economic activities and institutions also enables people to co-determine processes and co-create outcomes that include non-monetary values that are often neglected in competitive prices and quantitative measurements of prosperity (e.g. GDP) such as culture, beauty, well-being or conviviality.

But do people have the time to partake in so many democratic negotiations and other unpaid productive activities? Here, it might be important to note that it is not expected that everyone will participate in all processes everywhere. This would obviously be impossible. In relation to democratic participation, a rather simple answer to this

problem would be the representation of the affected either through election or through sortition. Nevertheless, the problem of time for these activities remains, considering the high demands of contemporary jobs and the necessity for many people to work long hours to pay their bills. This is a reason why, for example, we find that it is mostly the women in full-time householder positions or who work part-time that actively participate in CSA projects (Cone and Myhre 2000, 193). This is also the reason why there are most likely educated, middle and upper class families who both desire and are able to partake in such projects (Monson 2017, 87). The unequal distribution of time, money and education is a fundamental socio-political problem that limits the participation in both parliamentary politics and the democratic governance of economic activities. One rather simple answer to these problems is that the participation in these activities would be rewarded in some manner, be that in the form of money, vouchers, free subscriptions or more generally recognition. Nevertheless, it must be admitted that a market commons – let alone individual projects therein – cannot fundamentally solve or mitigate these problems. To structurally provide people with more resources (e.g. better education, higher minimal wages, fewer working hours per week), collective *political* action is necessary. Despite these limitations, it must be noted, however, that people often do have time outside of wage-labor relationships that they spend on different activities such as shopping, hobbies, sports and volunteer work in other associations. The question that then arises is how this time is spent and what priorities are set. The energy that many people already exert in such activities could be channeled into the co-creation of democratic market commons.

But are people interested in these forms of participation in economic affairs? This question reminds us of our short discussion of stealth democracy. Here, it might suffice to note that people will probably not experience the necessity to exert time and energy in democratic economic governance as long as an open and competitive market appears to be more or less functioning. The more people perceive and experience the ecological and economic crises that result from an economic system based solely on individual negative freedom, the more willing people might be to invest time and energy into coordinated, collective action. Therefore, interest in democratic economic governance is not merely an abstract ideal, but also an attempt to alleviate real insecurities and injustices, by solving concrete problems of hunger, unemployment, exploitation and environmental degradation. This does not mean that we must wait until things get much

worse for a market commons to develop, but rather that interest in democratic participation often arises out of a desire to change existing social arrangements – whatever the causes for this desire might be.

Let us now turn to the final critique of democratic economic governance in a market commons: The problem of up-scaling. Here, it is often argued that the open and competitive market is global and that it is therefore impossible to create democratic institutions that can coordinate and regulate these economic activities. Similarly to the complexity argument, the problem of global commodity chains should not necessarily hinder people from taking control of their economic activities at home and in collaboration with people elsewhere. While some of my examples were rather local and small-scale, this should in no way imply that larger institutional frameworks could not be developed to foster these socio-ecological enterprises in different places. Although such community-supported commons associations would generally imply a re-localization of economic activities, they could theoretically also be developed with producers on the other side of the world. The same can be said, more generally, for the democratic governance of global market commons. This is what James Tully understands as “glocal” cooperative networks of democratic economic governance in which the global emerges out of the interaction and collaboration between diverse local socio-ecological systems.

## 9. Conclusion

After this long journey examining the relationships between democracy, markets and commons, let us now return to the original problem and question with which we began our investigation. We commenced this study with the question whether democratic capitalism truly was the best and only social arrangements that humans could imagine and realize. With reference to diverse political, socio-economic and ecological “crises”, we recognized that democratic capitalism is facing fundamental challenges: decline in political participation, democratic deficits, rising inequalities, economic instability, ecological degradation and, last but not least, climate change. The question then arose to what extent democratic capitalism brings these possibly interrelated problems about and whether the institutional arrangements of democratic capitalism has the potential to solve them. Assuming that this is not possible, we then asked whether the concept of the commons could provide us with social arrangements that might be more adequate for this task. More specifically, I asked whether – and if so, how – the concept of the commons can strengthen democratic practices and institutions by limiting or even overcoming the negative political, socio-economic and ecological effects of open and competitive markets.

Generally put, the conclusion that can be made after this endeavor is positive. We can conclude that commons are highly conducive to democracy, which we defined as the rights and capabilities of people to co-determine their social conditions or, in more ecological terminology, to co-create their shared socio-ecological realities. The central reasons for this are twofold. Firstly, commons enhance individual freedom in a limited world through the direct access to resources, ultimately enabling them to secure their interdependent lives and liberty. Secondly, the democratic governance structure of commons allows humans to collectively solve diverse conflicts and problems, by perpetually adapting with changing socio-ecological conditions. In order to understand this conclusion more fully, let me summarize the central arguments of the book again.



## 9.1. Democracy

We began our examination of democratic capitalism with an analysis of the concept of democracy. The reason for this is that democracy has historically and theoretically turned out to be one of the central means to legitimize social arrangements. As we saw, it is often assumed that democracy is understood as representative democracy. Here, people participate in periodic elections in order to elect representatives who will define the rules and regulations of society in deliberative arenas called parliaments. Here, it was acknowledged, however, that although representative democracy might be the most widespread form throughout the world, this in no way implies that it is the most desirable. We therefore asked ourselves what other concepts of democracies exist and discovered a plethora of diverse models and highly contested concepts of democracy. With reference to the work of Wolfgang Merkel and others, we broke these concepts into a three-tier system of minimal, medium-range and maximalist models of democracy. Simply put, the minimal model understands democracy as a competitive elitist system; the medium-range model emphasizes the just procedures and civil rights; and the maximalist model underlines substantive socio-economic rights as a central component of democracy. Merkel argued that the minimalist model is unsatisfactory because it remains unclear to what extent people possess possibilities to influence political affairs. In turn, he also criticized the maximalist model for being too demanding and therefore unrealizable. Thus, he concludes that we shall uphold a medium-range model of democracy. I argue, however, that this conclusion is highly problematic because it appeared to transform the historically contingent existing form of democracy into a universal model of the best political arrangement. Unsatisfied with this conclusion, I argued that democracy has an underlying “surplus meaning” that always has the tendency to dynamically go beyond and transform its existing form. Furthermore, I argued that the form and substance of democracies (e.g. formal civil rights versus substantial socio-economic rights) does not hold, because all forms of democracy endorse specific substantial values. Thus, I conclude there exists a notion of democracy that lies at the heart of all three models democracy. With reference to David Held, we ultimately defined this notion of democracy as the “principle of autonomy”, which provides people with the rights and capabilities to co-determine their social conditions. With this definition, democracy cannot, however, be limited to the sphere of politics and the state, but rather must be understood as a principle that applies to all spheres of life.

## 9.2. The Market

After having arrived at this definition of democracy, I then turned to the concept of capitalism or, rather, the open and competitive market and its relationship to both the state and democracy. With reference to Hobbes, we discovered that an absolute state is of central importance for the protection of individual private property and the creation of a competitive market. In turn, the justification of the market was discussed with reference to Adam Smith and more contemporary economists such as Friedrich August von Hayek. Here, we discovered that individual private property coupled with competitive markets brings about social order and a perpetual growth of wealth. Within this framework, social order is created through the free or self-regulating interaction of producers and consumers, which not only should bring the most efficient allocation of resources about but also disciplines market agents to be more productive. Importantly, this self-regulating mechanism of the market requires that state intervention in “private” economic affairs is limited and that markets are opened up beyond the level of the nation-state. I therefore call this economic institution the open and competitive market. After having discussed the relationship between the market and the state, I then analyze its relationship with democracy. Here, we interestingly discover that both Adam Smith and Hayek recognize that most people do not necessarily desire such market arrangements, because of their “egotistical” interest to lead a secure and stable life. The question then arises who can politically implement and uphold such a social order. Due to the resistance against these arrangements, Hayek openly argues that democratic politics must be “dethroned” and replaced with wise and impartial rulers, who are elected once in their lifetime. Due to the substitution of democratic politics with quasi economist kings, I argued with reference to Herman Heller that this market-state arrangement can be interpreted as a type of authoritarian liberalism. But we then discovered that even with periodic elections the possibilities of politicians and the state to influence economic activities and correct market outcomes are highly limited. The reason for this is the free movement of private property that enables investors or what we called the *Marktvolk* to move their capital to where the rates of accumulation are the greatest. As we saw, when the *Staatsvolk* and politicians attempt to limit accumulation strategies and redistribute wealth, this second constituency can indirectly punish them simply by withholding investments, thereby causing unemployment and economic crises. Hence, I contended that the structural constraints of open and competitive

markets severely limit and undermine peoples' democratic possibilities to alter and co-determine their social arrangements. Accordingly, I then concluded that democratic capitalism and its underlying state-market dichotomy is most likely highly incapable of institutionally adapting and solving the diverse social, economic and ecological problems that exist.

### 9.3. Commons

Due to this conclusion, I asked whether the concept of the commons provides us with different social arrangements that might mitigate or possibly even solve the antagonism between the market and democracy. In order to answer this question, I began my investigation with a discussion of Garrett Hardin's *Tragedy of the Commons* from 1968. Simply put, this influential article or, rather, metaphor presented us with a situation in which individuals using a commonly owned yet unregulated, open-access pasture find that it is rational for each herder to put more and more cows on the field despite its limited carrying capacity. The reason for this is that each herder can privatize the benefits (e.g. milk and meat) and externalize the costs (e.g. degeneration of soil fertility). Because it is assumed that each will act in this manner, the herders are compelled to pursue maximization strategies in order to survive, which, however, paradoxically leads to the overuse and destruction of the resource system. From this perspective, it can thus be assumed that unregulated resources held in common inherently lead to tragedy and therefore do not present us with a viable alternative to democratic capitalism. This is at least a widespread interpretation of Hardin's article. That being said, Hardin's answers to the tragedy also remain caught in the state-market dichotomy of democratic capitalism: privatization or socialization (i.e. nationalization).

Another answer to this problem is that presented by Elinor and, to a certain extent, her husband Vincent Ostrom. Most generally put, Elinor Ostrom demonstrates that the sustainable and democratic self-governance of commons is possible and an alternative form of organization "beyond markets and states". In her work, commons are more technically defined as common pool resources (CPRs) such as pastures, forests and water, on the one hand, and common property arrangements, on the other. CPRs are characterized by the fact that their goods (e.g. fish, wood) are rival and that it is difficult

(i.e. costly) to exclude others from using the resource system. As Hardin demonstrated, the difficulty to regulate these resource systems often leads to tragedy. The vast empirical work of Elinor Ostrom and her colleagues show however, that tragedy can be averted and overcome – not through privatization or nationalization, but through democratic self-governance. Or more precisely, the utilization of democratically structured common property arrangements can enable the sustainable governance of common property resources. In her work, Elinor Ostrom develops eight design principles that support the sustainable use of such resource systems. Here, I would like to focus on one important feature in her findings for our concluding reflections on her work. From a normative perspective, the most significant insight is that the people who use and are highly affected by resources should also have the rights to democratically regulate them. This enables people to develop and enforce rules and regulations against free-riding and unlimited appropriation. This enables not only the ecologically sustainable use of the resource system, but also the fair appropriation of goods within a specific group. Because the people who use the resources can define these rules, they often have much more knowledge of the existing specific contexts and can perpetually adapt these rules when conditions change. As we see, this understanding of democratic governance comes very close to our previously developed definition of democracy: the right and capability of people to co-determine their social conditions. It can be said that Elinor Ostrom provides the empirical evidence that this form of democratic self-governance is not simply possible, but also socially and ecologically robust. From these insightful findings, it can generally be concluded that “the commons” provide us with a viable alternative to democratic capitalism.

As I showed, there exist, however, some limits to the Ostroms’ work on the commons. Despite their focus on existing and functioning commons arrangements, a central problem lies in their lack or sometimes problematic critique of states and markets. Although they do defend commons as a superior form of organization to hierarchical “monocentric orders”, they do not deal with the problems that arise through privatization and the competitive market. Let us shortly summarize these arguments again. Here, the Ostroms argue that hierarchical monocentric orders often define unified rules that are either not adapted to specific contexts or not implemented at all. If implemented, this then leads to a form of oppression; if they are, however, not implemented, this then transforms the state owned resources into a de facto open-

access common that will probably be overused. We called this the tragedy of the hierarchical and monocentric orders. As an alternative to this problem, the Ostroms propagate a type of overlapping multi-scalar and polycentric governance system. Although I agree with their critique of hierarchical and uniform management schemes, Vincent Ostrom's vehement critique of the state is somewhat problematic because it appears as to throw the baby out with the bathwater. As we discovered with Elinor's work on the commons, a pooling of individual coercive power is necessary in order to limit freeriding and overcome tragedy. In this sense, the simplified model of commons also provides us with a monocentric structure. For questions of democratic governance beyond the nation-state this insight would become rather central, for it would imply that the arrangement must be monocentric while simultaneously being multiscalar and overlapping. We will return to this problem later.

But more importantly, a central problem in their theory lies, as previously mentioned, in their lack of a critique of privatization and competitive markets. Here, Vincent Ostrom remains silent. Elinor Ostrom, in contrast, argues that privatization will not occur in common pool resources, because it is rather costly. Obviously, this economic reasoning provides a rather weak argument against privatization. For this reason, I argued that privatization is highly problematic because it excludes others from the access to important resources that are necessary for their life and liberty. As we will later see, this leads to power asymmetries and domination. We may call this the tragedy of privatization. In relation to markets, Elinor Ostrom provides us, however, with a little more insight. Using the model of the prisoner's dilemma, Elinor argues that highly competitive markets force people to pursue maximization strategies and ultimately create a "straitjacket situation" in which people have "no alternative[s]" (E. Ostrom 2003, 25). Despite this insight, she does not pursue the problems of markets any further. For this reason, I developed an argument that aimed to bring the models of the open and competitive market and the unregulated commons together. Both institutional arrangements are structured according to what is technically called the prisoner's dilemma or the "isolation paradox" (Amartya Sen) and lead to the necessity to perpetually appropriate and accumulate more and more wealth. Yet while Adam Smith and other economists praise this system for its ability to perpetually generate more wealth, Hardin's metaphor presents this same competitive dynamic as one that increasingly destroys ecological resources and other resources held in common. I

argued, however, that this would also occur if all goods in the world were privatized, because the competitive growth dynamic between proprietors would remain. In existing societies, this market mechanism also leads to the increase in socio-economic inequalities, the destruction of livelihoods and economic crises, thereby ultimately undermining the institution of the market itself. Last but not least I argue that the incessant necessity to increase productivity reinforces the structural constraints of democratic deliberation and governance. Here, we clearly see how the diverse ecological, economic and political crises are interrelated. And again, we see that the open and competitive market highly limits people's capabilities to alter their intuitional arrangements in order to collectively solve problems. I thus argue that the tragedy of privatization ultimately also leads to the tragedy of the (open and competitive) market.

If we return to the Ostroms, it must now also be said that even with a better-formulated critique of hierarchical monocentric orders and competitive markets, two fundamental problems remain in their work. Firstly, the Ostroms also lack explicit normative arguments *for* democratic commons arrangements. Secondly, their focus on the management of common pool resources, makes it appear as though only goods that are rival and non-exclusory (e.g. waters, forests, alpine meadows etc.) should be managed with common property arrangements. The two problems are obviously interrelated. The lack of general, normative arguments for common property arrangements inherently supports the assumption that commons are merely something that refer to pastures and forests. Accordingly, commons will most probably maintain a rather marginal, niche existence despite the possibility to apply the concept to a wide range of goods and resources, thereby potentially creating not only a more sustainable, but also a more just and free society. After recognizing these shortcomings of the Ostroms' work I therefore attempted to develop a more explicit and elaborate normative argument for the commons.

#### **9.4. Nature**

In order to do this, I began by developing a normative argument for the commons from an ecological perspective. The aim of this step was to break with the framework provided by Hardin in which nature is portrayed as a background stage and, ultimately,

a limit to human freedom. Furthermore, the problem with such a Malthusian model is not only that nature is dealt with in an instrumental and, possibly, exploitative manner, but also that the basis of existence is assumed to be the antagonistic conflict between all living beings. Simply put, I argue that this is not only false, but also cannot lay the foundation for a sustainable and democratic society. Here, it must again be acknowledged that simply by changing one's conception of the world, one does not automatically change the organization thereof. That would be solipsistic and naïve. Nevertheless, it cannot be denied that concepts, models and metaphors do play a central role in our interaction with one another and the arrangements of the world. If this were not the case, we would not have to take on the trouble of writing books and discussing ideas. Accordingly, I argue that our understanding of nature is highly relevant not only for our relation to the environment but because it provides a type of symbolic backbone for all other relationships. I therefore argue that we must shift from a dualistic and anthropocentric to an interrelated and ecocentric model of nature. With reference to Andreas Weber and others, I develop the notion of self-organizing organisms that dynamically adapt in and with their environments, ultimately taking an active part in the interdependent co-creation of reality. The concept of interdependence provides us with a key principle for developing an understanding of abundance in a limited yet shared common reality. Here, other living beings are understood as a precondition for one's own freedom and flourishing. From here, I developed an ecological understanding of freedom, which I define as freedom with, through and against the other. Within this framework of interdependence, the central principle of care for the other is apparent. Yet despite my emphasis on empathy, cooperation and shared, common realities, by combining intrinsic, instrumental and antagonistic principles in this notion of freedom, we are able to comprehend our interactions with other beings in a complex, multivalued and conflictual manner. Here, the simple fact that we share a common reality does not only imply that people always cooperate, but rather that conflicts arise and must be dealt with. Freedom is thus defined as an ongoing process of negotiated cooperation in the co-creation of a shared common reality. This presents us with an ecological reinterpretation of our original definition of democracy, which we defined as the co-determination of social conditions. With reference to the work of James Tully, I understand this as a civic notion of democracy that emphasizes the dynamic adaptation and transformation of institutions through civic practices of collective action. This civic understanding of democracy, in turn, provides us with an adequate theoretical



framework for the commons. Here, I discuss Ugo Mattei and Fritjof Capra's notion of eco-law as a second order commons that is based on these civic activities of democratic negotiation and cooperation. This ultimately leads us to a new interpretation of the commons, which is not understood merely as a resource, an institutional arrangement or the relation between the two. Instead, commons are comprehended as a performative civic activity of self-organizing or commoning that brings common goods and our common reality about through a process of co-creation.

## **9.5. Property**

After presenting this ecological reinterpretation of freedom, democracy and the commons, I then attempted to develop a commons theory of property. With reference to my previous discussion of socio-ecological interdependence, I argue here that a commons theory of property revolves around the concept of access to and democratic governance of shared resources for the satisfaction of one's similar yet conflicting needs. With this general notion, I then aim to critically reflect and reinterpret John Locke's famous labor theory of property. In a nutshell, Locke's theory of property declares that in a state of nature people have the right to individually appropriate resources from a commons that was originally given to everyone. I discuss this theory in relation to three central concepts: (self-)ownership, non-interference and labor. Here, I argue with reference to G.A. Cohen that the concept of self-ownership is based on the prioritization of freedom from all non-contractual claims and obligations towards the wider community. This is basically the principle of non-interference. Put somewhat differently, ownership frees the individual from considering the negative effects of one's actions on the other. Considering our notion of ecological freedom, this is highly problematic, because it negates the inherent, pre-contractual interdependence between beings and the underlying conflicts that result from constituting this shared reality. While the owner of individual property can enter cooperative relationships through contracts, she is systematically freed from having to deal with existing conflicts. For this reason, I argue that we must develop another notion of property that is more suiting to the principles of interdependence. In relation to Michael Sandel I then contend that the concept of guardianship or stewardship is more adequate for a commons theory of

property, because it aims to integrate other affected beings into its governance structure.

In a second step, I discuss the notion of non-interference, in more depth. Here, I argue that non-interference is problematic, because the un-interfered or unlimited appropriation and accumulation of resources by individuals inherently interferes with the freedom of other people. The reason for this is that it changes the amount of resources that other people have access to. Simply put, if someone appropriates a plot of land, I cannot use it. Assuming unequal possibilities to appropriate, the access to resources can thus become highly unequal. Those without the direct access to resources must then pursue wage labor in order to exchange labor for money and money for food. Due to this dependency on wage labor relationships the person without resources must enter wage-labor relationships. And due to the underlying power asymmetries between the employer and the employee in such a constellation, I understand with reference to Philipp Pettit wage labor relationships as problematic due to the threat of arbitrary domination. In short, non-interference can lead to serious forms of arbitrary interference and, importantly, domination. I therefore argue that a commons theory of property must replace the principle of non-interference with the notion of non-domination. In a third step, I argue that we must replace the central category of labor in Locke's theory with that of needs. According to Locke, labor is the central justification for the right to appropriate resources. With reference to Carol Gould, I argue that a commons theory of property would emphasize the social appropriation of resources in joint activities. The problem that arises here is, however, that people and groups have highly unequal productive capabilities. This could theoretically lead us to a similar asymmetrical distribution of resources and thus to relations of domination. As an answer to this I argue with Jeremy Waldron that this special right to appropriate resources through labor must be replaced with general right to access resources according to need. Yet in contrast to the unlimited access to resources as conceptualized in Locke's original commons, our interpretation of this commons would be democratically regulated.

After this critical reinterpretation of Locke's theory of property, I then turn to John Rawls. For us, Rawls' property-owning democracy presents an interesting social arrangement that also emphasizes the positive access to resources as a precondition for

life and liberty in a democratic society. Schematically portrayed, in comparison to the *ex post* distribution schemes of the welfare state in the form of housing and health care for those in need, Rawls conceptualizes this positive right as an *ex ante* or pre-distribution of “productive assets”. While I agree with much of his reasoning, I contend that these individualized resources coupled with competitive markets is highly problematic because they inherently induce maximization strategies and perpetual economic growth as already discussed in relation to the tragedy of the market. For this reason, I argue that not only must we be critical of the emphasis of the competitive market, but we must also shift our focus in such a pre-distribution scheme from productivity to care. I interpret here care, however, not as the supposedly “unproductive” activities of housekeeping and social work, but rather as the emphasis on the sustainable re-production of resources through labor activities. Accordingly, I argue with Sybil Schwarzer that this is best done with common property arrangements that are more conducive to care and sustainability due to their inclusive and democratic governance structure.

In order to avoid possible misunderstandings, I would like to generally mention something important in relation to my numerous claims that we must “shift from X to Y.” Throughout my investigation I have argued that we must change concepts that underly other concepts. These “shifts” include, for example: from anthropocentric to ecocentric, from dualistic to systemic, from ownership to guardianship, from non-interference to non-domination from labor to needs and, finally, from productivity to care. I must admit, that this sure is a lot of shifting. Critical readers of my argument will have noticed, however, that I regularly fall back on old terms that I had just criticized. Often enough such a shift rarely implies that the previous term should be entirely annulled. Let me illustrate this with reference to a few examples. In my discussion of nature and ecology I argue that we must replace our dualistic understanding of nature with a systemic concept thereof. This does not, however, mean that all linguistic distinctions between mind and body or culture and nature simply disappear. The point is that although we differentiate these things symbolically, they remain organically interrelated parts of a whole. In my discussion of Locke, I argued that we must replace the special right to resources through labor with the general right to access resources according to needs. While I maintain that this is true, I do not, however, intend to imply that all rights to the fruits of one’s labor should be denied. Instead, the shift to a needs-orientation in property theory thus simply implies its prioritization over the value of labor, without

necessarily negating it. This is also the case in relation to non-interference, which should be replaced by the notion of non-domination: Obviously, non-interference remains an important value, but should be positioned under non-domination in the ordering of principles. Similarly, my critique of the focus on productivity in Rawls' property-owning democracy does not free me from using this term. I cannot simply replace the word productive with care, because no one would then understand what I am talking about. Here, I intend not to banish the word productivity from our vocabulary. Instead, this discussion hopes to replace its connotation with endless monetary growth with one of care, sustainable reproduction and qualitative growth. That being said, let us now turn to the last discussion of a commons property theory, in which I, again, utilize the term productive.

In the final step of my commons theory of property the relation between productive and consumptive goods is discussed. Here, I ask myself whether we should utilize common property arrangements only for specific (productive) activities and specific goods. In this discussion, I refer to the problem of green house gas emissions and the unequal distribution thereof. Here, 20 percent of the world's wealthier population produces 80 percent of the world's green house gas emissions. This problem provides us with the insight that strategies of accumulation do not only occur in the sphere of production, but also in the sphere of consumption. Furthermore, strategies of consumption maximization are largely interrelated with accumulation strategies in production. I argue that this maximization strategy occurs in the sphere of consumption, because it is assumed that my freedom is increased, if I extend my reach over my possession of goods. More goods equal more freedom. And because the access to these consumption goods are normally structured according to the principle of individual private property and non-interference, the central means to access more goods is simply to buy them. This leads to the situation where everyone strives to own increasingly more and more things. As we well know, this is problematic in a world of limited resources. A commons approach to this problem is rather simple: If people share these goods they can increase their access to resources, without necessarily having to produce and buy as many goods. Thus, the direct access to common goods can substantially expand the range of people's individual freedom. This is a concrete example of how abundance can be created within planetary boundaries.

## 9.6. The State

After having developed a commons theory of property I then turned to analyze the relationship between the state and the commons. The focus here was not the organization of governmental bodies, but rather the question if and how the state should provide citizens access to common resources. Before turning to this question, however, it is important to shortly mention the theoretical organizational structure of a state in a commons based society. As previously mentioned in my discussion of Vincent Ostrom's critique of hierarchical monocentric orders, from a commons approach the democratic state should be interpreted as a pooling of coercive abilities through collective action. Ideally, democratic state power is then understood as a form of reciprocal and public coercion. Importantly, in order to deal with the problem of free-riding, the state must be structured in a monocentric manner. The problems of a monocentric order result therefore not from its monopoly on the use of force, but rather from its undemocratic internal organization. In order to uphold a democratic structure within, the internal organization of the monocentric state should, however, consist of multilayered, overlapping democratically governed bodies. This is normally understood as federalism. The unity of the superstructure would, in turn, aim to limit the competition and freeriding between the individual units.

Before continuing with the summary of my argument, I would like now briefly touch on an issue that is under-examined in my analysis: supranational global governance. Theoretically, the insights also applies to a system of global governance. It must be admitted that this issue was underdeveloped in my investigation. For this reason, I would like to briefly touch on the problem here. Concretely these insights imply that in order to overcome global tragedies, a type of monocentric global government is theoretically required. A democratic organization of such a federal, supranational structure can be understood with David Held's notion of a cosmopolitical order (Held 1995) or with Francis Cheneval's concept of a "demoicracy" (Cheneval 2011). At first glance, this conclusion would imply a rather important break with the Ostroms' theory of a polycentric order. Here, we might ask ourselves why the Ostroms did not see this inconsistency in their theory. One reason for their emphasis on polycentricity could have been of pragmatic nature. Knowing that the world is messy and supranational collective action can be difficult to realize, they simply opted for a more viable

alternative. Another explanation could, however, be that an overarching global government is not necessary, because only the individual global commons (e.g. air, Internet etc.) need governing bodies and not the world per se. Here, the concept of territorial units would be replaced with functionally defined jurisdictions. To be fair, I can imagine that it is this notion of a plurality of functional governing bodies over commons that they imagined. Here, it can nevertheless be asked whether the coordination of these diverse bodies do not also require a higher level monocentric order. According to the arguments presented here, my assumption is that they would. Whether such a monocentric order is realizable is, however, another question.

Let us now return to the level of the nation-state and examine the role of the state in the management and provisioning of commons. In order to do this, I began this analysis with a recapitulation of diverse models of the state and their principles of organizing common resources. Let me shortly summarize these findings. As we know, the hierarchical and monocentric state manages common resources in a top-down manner according to unitary rules. Theoretically, the range of commons managed by the state depends on the will of the sovereign. As we already mentioned, the problems here can range from oppression, paternalistic provisioning or tragedy. In a minimal, market-based state common resources are generally minimalized. Within the Lockean framework, we can say that the resources of the original commons have largely been enclosed and privatized. A later expansion of commons by the state is limited due to the structural constraints of the open and competitive market. I then turned to the welfare state and a property owning democracy. I mention the two models together here because both aim to provide individuals access to resources that have been pooled through the collection of levies. The distributed resources are often understood as public goods that are provided for by the state and often consumed individually (e.g. housing, healthcare, education). While this model provides people with access to resources, it is often criticized that this occurs in a paternalistic manner. A property-owning democracy aims to mitigate this problem by providing people with productive assets. As we already discussed, coupled with competitive markets this leads to the problem of perpetual growth, which tends to overuse society's common, socio-ecological resources.

After having gone over these models, I asked myself how the state would provide access to commons in a commons based society. Furthermore, I asked which resources and goods a state should provide. Beginning with the second question, I shortly discussed the problem of ideal theory in political theory. My main claim here was that ideal theory can not only disempower people, but can also lead to a type of paternalism in which people (e.g. philosophers) create lists of the goods that the state should provide. For this reason, I argue with Amartya Sen that instead of such a “transcendental institutionalism”, a “realization approach” might be a more suitable to answer these questions. According to Sen, this realization approach focuses on injustices and aims to overcome them through widespread democratic deliberation and participation. In this manner people can express their own concerns, needs and desires and are empowered in their democratic capabilities. From a commons perspective, this also includes the civic activities of commoning in the state provisioning of public goods. This would generally imply the democratic co-production of public goods. In order to understand this in more detail I then compared three examples of the provision of public goods with state supported commons arrangements: housing, healthcare and education. In most general terms, public goods as commons implies that the (potentially) affected people have the rights and capabilities to create and manage the common resources. The state would provide an enabling role. For this reason I refer here to the notion of a background partner state. In the case of housing, this would imply that the people actually co-owned their housing units; the land could in turn be organized as a Community Land Trust. The access to a home could occur, for example through the provision of housing commons coupons. In the case of health care, I discussed the problem of rising costs and increased patents in medical research and development. One answer to this that I discussed was the notion of an open-access health commons for research in which information can be shared freely. Another example I described was a model of community health centers that can be understood as a commons. Lastly, I discussed education as a commons. With reference to the problem of the enclosure of scientific information through private academic journals, I again propagated a model of an open-access information commons. In relation to schools and schooling I emphasized the democratic participation in education policymaking and the actual governing of schools. Furthermore, I discussed the importance of ecological and democratic principles in schooling, both in relation to teaching content and the organization of learning processes. Importantly, this would imply the individual and collective self-organization of learning in relation with one’s



concrete environment. In most general terms, I conclude that the state should not simply provide commons, but rather support the co-creation and maintenance thereof.

After having fleshed out the difference between public goods and commons, I then turn to some final questions of the state-commons relationship in a non-ideal world. Firstly, it is important to recognize that, in a non-ideal world, possibilities to democratically participate in the processes of commoning are not necessarily given. It can also be expected that powerful social actors resist these practices, because they largely limit their appropriation possibilities and might even transform some of their resources back into commons. Due to the power of such actors, they are often able to influence politicians and politics, ultimately illegitimately utilizing the state monopoly to protect their private interests. Considering such illegitimate social arrangements it can be expected that both fewer common resources are provided to citizens and that democratic participation is limited. In such cases, I argue that it is necessary to widen our understanding of democratic participation. This can include, for example, practices of confrontation. Confrontation understood as social protest can provide people with a means to criticize injustices and illegitimate social arrangements through collective action. When politicians do not hear these voices, another strategy that is practiced is that of “reclaiming the commons” in which privatized resources are re-appropriated that are considered to be originally held in common. Besides confrontation, another strategy of dealing with elite resistance and state oppression is through “interstitial” civic activities of commoning. Here, people actively create commons in the cracks of existing social arrangements by pooling resources and collectively organizing common goods and services for the satisfaction of their needs and desires.

## **9.7. Market Commons**

In the last step of our investigation I finally examined the relationship between the market and the commons. Despite my rather fundamental critique of open and competitive markets, I asked here whether the institution of the market could be organized in a different manner. The reason for this is that I believe that the basic principle of contractual exchange of goods and services is a very practical social institution. The question therefore is whether we can have democratically regulated

exchange-based markets without having the self-regulation of supply and demand through competitive prices as the dominant form of social organization. Interestingly, a quick review of commons literature on markets shows that many authors criticize the market and defend democratically organized firms, but few deal with this rather important issue. In order to develop an understanding for this problem I approached the topic from a historical perspective. With reference to Karl Polanyi and Fernand Braudel I argue that, albeit only marginally, markets have existed throughout human history. This is not to say that exchange or markets are inherently “natural” practices or institutions, but rather that a historical perspective might provide us with illustrations of other market arrangements. Importantly, the competitive market only slowly developed since the 15<sup>th</sup> century and increasingly gained importance and influence since the 18<sup>th</sup> century. Here, I interpret this development as a process of opening socially embedded markets up that occurred parallel to the enclosure movements that transferred common fields and forests into private property. In order to comprehend how markets were possibly organized before the existence of open and competitive markets, I discuss the role of guilds in medieval markets. Importantly, guilds defined rules and regulations for specific markets that limited competition and stabilized prices in order to protect themselves from potential economic instabilities and existential threats. Importantly, market institutions were regulated and adjusted in order to satisfy people’s “egotistical” needs and desires. Although it can be questioned to what extent this regulation was truly democratic, it nevertheless was a means to utilize an exchange system yet without allowing market competition and monetary growth to determine their economic activities.

After this rather short historical excursion, I then attempted to develop a concept of a social embedded and democratically regulated market, which I coin the market commons. The aim is thus to transform the open and common market into a market commons. By defining the market as a commons I argue that we must conceptualize the market within an ecological framework. Here, we must keep in mind the flows of matter and energy that is brought about through monetary exchange. Furthermore, I argue that a market commons must be structured according to the democratic regulation of the largely affected people. Ideally, democratic governance of economic institutions provides people with possibilities to collectively organize their economic activities in order to satisfy their similar yet conflicting needs and desires. Here, the concept of

wealth itself would be democratically defined thereby replacing a purely quantitative monetary notion of growth with a plurality of forms of qualitative development. The aim of such arrangements is to enable people to maintain local and regional economic cycles without, however, negating interregional and global exchanges. In this sense, the democratic governance of the market commons transforms the overarching and transcendent rules and regulations of an open competitive market into decentralized socio-ecological niches, in which the default rules of the institutional framework foster cooperation, fairness and the sustainable reproduction of socio-ecological systems. Acknowledging the problems of uneven development and regional disparities, such a decentralized arrangement would, however, necessarily also require higher-level democratic governing bodies for the co-determination and perpetual adaptation of its overall framework.

After laying out this somewhat idealized model, I then discussed some other concepts and examples of markets in order to flesh out the idea of a market commons. I begin this exploration with a corporatist-associative notion of democracy. Generally put, Paul Hirst's understanding of associationalism comes rather close to my concept of a market commons in that it emphasizes the widespread democratic inclusion of the largely affected in its governance practices. Similarly, Wolfgang Streeck and Philippe Schmitter discuss the notion of corporatist-associative organizations that aim to overcome the prisoner's dilemma in competitive markets through process of negotiation of conflicting parties. Put somewhat differently, it enables people to complement *ex post* individual decision-making *in* the market with *ex ante* collective decision-making *about* the market.. With Axel Honneth, I understand this as a "discursive flexibilization" of market mechanisms, in which other non-monetary values can be expressed and integrated into the evaluation of resources, goods and services. I more generally understand this as a re-embedding and de-commodification of economic goods and activities.

In general, this notion of corporatist-associative democracy can be interpreted as a transformation of the competitive, liberal market into a socially embedded coordinated market. As Hall and Sokice argue in their *Varieties of Capitalism* (2004), a classical example of such coordinated market is the labor market and, more specifically, the production of skills through a vocational education and training (VET) system. VET is interesting for us, insofar as it exemplifies concrete corporatist "intermediary"

institutions between the market and the state that possess legal authority to define, adapt and enforce its own rules and regulations. Importantly, VET is a governance system that was historically developed in order to mitigate employee poaching and overcome the tragedy of skill degradation that result from competitive markets. Yet despite these similarities to a market commons, there do exist fundamental differences to a corporatist arrangements and existing VET systems. A main problem in existing VET systems is focus on the needs of “the economy” and not on the needs and desires of the wider public, due to its limited democratic inclusion, on the one hand, and the structuring principles of the wider competitive market that it is in.

For this reason, I then turn to another example of what a market commons could look like: The social and solidarity economy. The social and solidarity economy is quite a broad term that aims to organize market arrangements according to the principles of fairness, ecological sustainability and democratic self-governance. A central feature of its institutional arrangements is the satisfaction of basic needs. Classical examples of the social and solidarity economy are fair trade and organic farming networks, community development organizations and socio-ecological investment funds. In contrast to the notion of market socialism, in which firms are democratically run in a competitive market setting, here, the isolation paradox is overcome through negotiated cooperation between producers and consumers. Other, diverse stakeholders are also integrated into the governance schemes thereby creating arenas for conflict management and collective action. Importantly, the governing body of these market arrangements often have the right to collectively co-determine the reinvestment strategies of these funds, thereby democratizing the flow of capital. As we remember from our original discussion of the state-market relationship, the private control over capital is a central cause of the democratic structural constraints. An inclusive, democratic governance structure for such economic activities thus provides the institutional framework that can foster principles of guardianship towards the wider community.

My last example of a market commons is what can generally be called community modes of production. The most prevalent type of this is community-supported agriculture (CSA), which can be understood as a practical response to the diverse and severe negative effects of open and competitive markets in agriculture. CSA can generally be understood as a “food commons” (Vivero Pol) that aims to re-appropriate the control

over one's local food system. A central feature of CSAs that goes beyond the social and solidarity is that consumers normally subscribe to a weekly ration of food, which finances the enterprise prior to production processes. This small change in the payment structure frees the producers from having to sell their goods "on the market" and thereby enables them to plan the production process in accordance to the needs of the members of the association. Importantly, this interesting trick suspends the coercive market mechanisms that forces one to perpetually produce more and more goods for less and less money. Furthermore, the payment in advance leads to a socialization of the entrepreneurial risks between all the members of the group. Acknowledging that such organizations might not be affordable to everyone, some CSAs have even institutionalized "offer rounds" in which the members pay for their subscription according to their abilities. These offer rounds provide a somewhat new interpretation of monetary exchange that replaces competitive prices with practices of gift giving. Furthermore, possibilities for the members to participate in the production process not only decrease the costs of the subscriptions but also demonetizes the value of the goods being produced and consumed. All in all, production and consumption become social activities that are not organized simply according to efficiency gains, but rather according to shared notions of a convivial, good life. Theoretically, this model of community supported modes of production could be applied to any other goods and services.

Now, in my very last section I will bring my paper to a close with a short recapitulation of the defense of market commons against possible critiques. A first critique that might be raised is that a democratic market commons limits and eradicates market choice. Here, it must be emphasized that choice is not eradicated, because the buying of goods "on the market" or in the (super)market still remains. Instead, a market commons aims to alter the institutional framework of the market and its principles that structure the choice of products. Furthermore, the democratic governance of these institutions provides people with the abilities to co-determine these arrangements according to their shared and conflicting needs and desires. Lastly, in some cases feedback loops exist in which consumers can influence the creation of production before they are even produced. From an ecological perspective, this *ex ante* choice and co-determination is of great importance because it coordinates supply and demand through democratic

deliberation and negotiation processes, ultimately replacing the invisible hand of the competitive market with the transparent and democratic self-determination of people.

A second critique is that economic affairs are too complex to be democratically regulated. I argue that this widespread belief is nothing else than a theistic argument that aims to immunize economic activities from democratization. Here, the question is not necessarily if we can, but rather if we should (attempt) to break up the complexity into more transparent and manageable units. Nevertheless, we must importantly differentiate here between the democratic planning of economic institutions and activities. The democratic governance of the institutional framework does not imply that all activities will be planned in advance. Instead, it connotes that the institutional framework can be perpetually adapted to the changing socio-ecological conditions. While prices can be democratically co-determined, the *ex post* choice in the market is individually and “spontaneously” chosen. Beyond this, however, democratic economic institutions can also provide producers and consumers to coordinate their economic activities in overlapping networks. In this sense, democratic planning must not occur in a uniform, top-down manner, but can occur in decentralized organizations that are created through the free association of consumers and producers.

A third critique that is often heard in these debates is that democratic governance of economic activities is not efficient. This is another knockout argument that aims to silence all changes to the competitive market. As we have seen from our extensive discussion of the open and competitive market, this institutional arrangement might be efficient in generating wealth for the few but not at maintaining sustainable livelihoods for the many. In this sense, the democratic governance of economic activities is more efficient in two ways. As just mentioned, democratic governance can, firstly, increase the *ex ante* deliberation over what shall be produced thereby short-circuiting the rather costly and energy-intensive feedback loop of the market based on purchasing choices. Secondly, democratic governance can allow people to co-determine their economic institutions and activities according to non-monetary values that competitive prices and regular commodities cannot take into account. In this sense, we can conclude that democratic economic governance is significantly more efficient in satisfying people’s diverse and rich needs than one-dimensional competitive markets.

A fourth critique is that people do not have the time for and interest in such time-consuming civic activities of commoning. Time is used for a plethora of activities. The question of time is therefore more a question of priorities in the valuation of these activities. This leads us to actual key question: will people desire to partake in such democratic activities of economic governance? This is a question that theory cannot answer. But assuming that people are reflexive, sentient beings that aim to solve problems, it can be assumed that they will take interest in such activities of commoning as an answer to the diverse socio-economic, ecological and political challenges that they face.

Last but not least, the market commons will most likely be criticized because it is assumed that it cannot be scaled up. Here, we are dealing with the general problem of globalization. If we interpret globalization as a unified entity, it will be a difficult nut to crack. But fortunately, globalization can be broken down into existing commodity chains and real, interdependent relationships. While some or most of my examples might have appeared to focus on the local, regional and national, this is because it is in the local that the global social relations are anchored. The global and the local are interwoven. By taking democratic control over one's local economy in no way negates the possibility to communicate and collaborate with people on the other side of the world. Thus, by understanding the market as a *glocal* commons aims to provide people with the rights and capabilities to reclaim, co-determine and adapt their institutional frameworks on diverse scales in order to satisfy their needs and maintain their livelihoods within the changing ecological systems that they inhabit.



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